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**JUSTICE, POLITICS AND MEMORY:  
THE LEGACIES OF FRANCOISM IN THE SPANISH TRANSITION**

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## **ABSTRACT**

In any process of political change, the emerging regime faces the difficult task of gradually dismantling, if not revolutionising, the previous political legality and deciding what to do with the people and institutions inherited from the old system. The fate of the new regime may depend on how these thorny issues are resolved. This paper will analyse both what the incipient Spanish democracy did and did not do with respect to Francoism and its hitherto loyal servants. In addition to the study of the correlation of forces between the regime and the opposition, some reflections will be made on the reasons why the past was not explicitly addressed, based on the traumatic memory of the civil war and the subsequent aversion to risk that it generated in Spanish society. It will also look at the initiatives that were taken for the rehabilitation of the victims of the dictatorship during the transition, which is the other major issue that must be addressed in all transformations of political regimes. Finally, some general reflections will be made on whether it is possible to relate the absence of retrospective justice in the Spanish case to the subsequent functioning of its democracy.

"In the transition a very heavy price was paid (...). In this country there were people who suffered so many injustices, who went through so much, so much, without being given the satisfaction of the recognition of what those crimes and abuses had been. Because let's not forget that General Franco did something which was the Causa General. A study carried out by the Ministry of Justice in which all the crimes committed in the Republican zone were recorded. This book is there, and it was published. And the Causa General of the other side?

Why not? It would be another thing if this second General Cause were to have consequences that sounded like revenge. But to know... Why are Spaniards denied the knowledge of many of the atrocities committed during Franco's regime? (...): neither the judiciary, nor the army, nor the security forces underwent a democratic transformation like the rest of society" (Fernando Álvarez Miranda, former Ombudsman. Interview in *El Mundo*, 5/12/99: 8)

"We are still far from reaching a consensus about either the utility or the advisability of using national courts as instruments to right the wrongs of the past" (A. James McAdams).

## Introduction<sup>1</sup>

Whenever a profound political transformation takes place, the emerging regime has to decide what to do with the institutions and individuals linked to the previous regime. As Elster puts it, the new political elites "have to decide whether and how the leaders, collaborators or agents of the previous regime should be brought to justice or penalised for doing so, and also whether and how the victims of these regimes should be rehabilitated and compensated" (Elster, 1998: 7). It is well known that in Spain, after Franco's death, the main civilian and military institutions inherited from the dictatorship were not purged. Nor were "truth commissions" set up to investigate the human rights violations that had taken place under Franco. And, of course, no trials were held against those responsible for the deaths, torture and illegal detentions that took place during the previous period<sup>2</sup>. For all these reasons, it is clear that, apart from the many achievements of political change in Spain, it is also necessary to ask what were the limits of the so-called "politics of consensus"<sup>3</sup>, who were left out of

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<sup>1</sup> I am grateful to Juan José Linz and José Ramón Montero for their comments and suggestions. This text is an expanded version of the one published by Oxford University Press (in Alexandra Barahona De Brito, Carmen González Enríquez and Paloma Aguilar: *The Politics of Memory and Democratization*, Oxford: Oxford University Press, 2001). This book will soon be translated into Spanish by Istmo publishing house.

<sup>2</sup> All this came as a surprise to some of the more lucid political analysts, such as Adam Przeworski, who underlines the fact that in Spain 'democracy was installed (...) without a break-up of the armed forces, without a purge even of the political police, without a very evident degree of politicisation and with two major parties that emerged almost overnight' (Przeworski, [1986]1988: 101).

<sup>3</sup> According to some authors, 'consensus is the cornerstone of reconciliation and forgetting the past' (Del Águila and Montoro, 1984: 248). Ramón Cotarelo has come to identify three types of consensus in the

the much talked about "national reconciliation" during the transition and what impact these shortcomings had on the process of democratic stabilisation<sup>4</sup>.

In order to answer these questions, the rest of the paper will be divided into the following sections. Firstly, it is essential to begin by demonstrating that the anomalies of the Spanish case cannot be understood without taking into account the collective memory of the civil war (1936-1939) and the subsequent aversion to risk that this traumatic memory generated in a large part of Spanish society. Secondly, it will investigate whether there were actors who came to demand the implementation of certain political justice measures (truth commissions, purges or trials)<sup>5</sup>. It will also analyse the obstacles that arose in the face of the mere possibility of these policies being adopted, and on what occasions they succeeded not only in slowing down, but even preventing their implementation. Thirdly, it is obvious that in any process of regime change the previous legality has to be replaced by a new, in this case democratic, one. However, studying what is reformed from the former and what other issues survive for a longer period of time, even colliding with the new democratic legality, are fundamental questions. It is therefore also a question of analysing the perverse legacies that authoritarian regimes often leave to democratic ones<sup>6</sup>. Fourthly, the various attempts at moral and material rehabilitation of the repressed that were approved will be studied, examining which were not successful and why. Finally, the conclusions will address the consequences that may have been derived from all of the above for the consolidation and institutionalisation of democracy in Spain.

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Spanish transition. The first was precisely an "agreement on the past" and consisted in not demanding accountability for it (Cotarelo, 1992: 13 ff.).

<sup>4</sup> From exile, the Communist Party of Spain began to speak of the policy of "national reconciliation" in the second half of the 1950s. Through it, the PCE explicitly renounced the use of armed struggle to put an end to the dictatorship. The scope of the reconciliation p r o c e s s in Spain would eventually have very little to do with these early proclamations.

<sup>5</sup> On the various *transitional* or retrospective justice measures that have been carried out in recent decades, see the three volumes edited by Kritz (1995) and the book by McAdams (1997).

<sup>6</sup> The study of the cultural and institutional legacies of dictatorships is receiving increasing attention in political science. One of the latest articles to stress the importance of legacies, memory and political learning processes in explaining regime change is Pridham (2000). This type of approach has been criticised by other authors, including Crawford and Lijphart (1995), who argue that an over-emphasis on legacies condemns the discipline of political science to case studies and the abandonment of comparative attempts. These a u t h o r s, however, recognise that, depending on the context, legacies can play a decisive role, and that, while they are not the explanatory variable for change, they do contribute to explaining it.

## **Fear, memory and risk aversion**

Over the last few years, Spaniards have watched, with a mixture of pride and amazement, as their transition became the undisputed paradigm for the peaceful transformation of an authoritarian regime into a democratic one<sup>7</sup>. The "Spanish model" has sought to be emulated by many of the countries that have undergone similar processes in recent years. In fact, an important part of the Spanish political elites who played a leading role in that episode have been repeatedly invited to international discussion forums, as well as to high-level political meetings, in the hope that their personal experiences would serve to reduce the uncertainty that often prevails in processes of political change<sup>8</sup>.

The lack of critical spirit that has so often accompanied evaluations of the Spanish transition is, to a certain extent, understandable, given that the expectations that had been generated after three years of civil war and almost forty years of dictatorship did not allow a particularly optimistic horizon to be glimpsed<sup>9</sup>. After Franco's death, both the memory of the repeated

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<sup>7</sup> This supposedly exemplary character has been questioned in some essays, such as those by Vidal- Beneyto (1981), Pons Prades (1987), Morán (1991), Martínez Inglés (1994), Jauregui and Menéndez (1995) and Navarro (1999; 2000). Almost all these authors speak of the "elimination", "abolition" or "eradication" of the collective memory of Spaniards, criticise a series of concessions made by the democratic opposition and express negative judgements about the functioning of the resulting regime. Lately, the process of political change has also begun to be critically analysed in some academic works. See, among others, Colomer (1990 and 1998), Jaime-Jiménez and Reinares (1998) and Buck (1998).

<sup>8</sup> Przeworski, despite being one of the main proponents of explanations of political change not determined by history or structural conditions, but by the institutional options adopted by the main actors according to their own interests and resources, recognises that there are certain circumstances under which the negotiated transition that took place in Spain is not exportable to other cases, even when the protagonists themselves propose it. One of the main problems he points out for the application of this model is "the responsibility of the repressive apparatus for the acts committed, often during the implementation of the authoritarian regime. Where repression has been massive and brutal and the memory is still alive in the generation that suffered it, the question of personal immunity may not be solved' (Przeworski, 1988 [1993]: 74). This helps to understand the greater difficulties experienced by the Southern Cone countries in contrast to the Spanish case. In the latter case, the generational changeover was crucial for the guarantee of impunity offered by the democratic forces to those responsible, both civilian and military, for the dictatorship to be sufficiently credible and for the process of political change to be negotiated.

<sup>9</sup> One of the great challenges of political science consists precisely in investigating how and why the expectations of social and political actors are generated, which is crucial to understanding how they order their preferences and why they make certain decisions and not others (Druckman and Lupia, 2000). This paper considers that one of the key elements in the configuration of expectations is the learning derived from

The ruptures of coexistence in the past<sup>10</sup>, as well as the uncertainty about the feelings of Spanish society during Franco's regime, fed the worst omens in some political observers, both Spanish and foreign.

Raymond Carr himself, one of the most prestigious British Hispanists, confessed at the commemoration of the twentieth anniversary of the first democratic elections (1977-97), which took place in the Congress of Deputies, that he himself came to fear "the worst" given the climate of mobilisation that prevailed during the transition, the numerous clashes between demonstrators and the forces of law and order and, finally, the terrorist actions of both sides<sup>11</sup>. Some Spanish thinkers of the time, such as Juan Benet, were also pessimistic about Spanish society's chances of evolving peacefully towards democracy after the death of Francisco Franco in November 1975.<sup>12</sup>

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past experiences, especially failures, since failures (especially if they are traumatic) tend to generate higher doses of reflection than successes (Jervis, 1976). Nothing guarantees, however, that this learning process will always occur. One of the necessary, though not sufficient, conditions for learning to take place from a civil war experience is a widely shared societal desire to preserve the integrity of state borders. This is also the only prerequisite that Rustow considers necessary for transitions not to fail irretrievably: the widespread desire to preserve national unity (Rustow, 1970). On the problems of statehood in processes of political change, see Linz and Stepan (1996). A more optimistic view on how to resolve these issues can be found in Latin (1995).

<sup>10</sup> Recall the four civil wars that have taken place in the last two centuries (the last one from 1936 to 1939), the levels of polarisation and violence, both political and social, throughout the Second Republic (1931-1936) and, finally, the systematic repression of the democratic opposition throughout Franco's regime (1939-1975). A recent study of political violence in Spain in the last century can be found in Juliá (2000).

<sup>11</sup> According to Carr, British television during the transition period constantly showed images of violent demonstrations in the Basque Country and brutal police intervention reminiscent of the war of 1936. These scenes, however, concealed the real moderation of society, since 'Spaniards were determined to avoid another civil war'. The same author's initial pessimism was also evident in a lecture he gave in Madrid in March 1977. On this occasion he stated that 'the most important legacy of the civil war' was 'the division of Spanish society into two irreconcilable blocs, the victors and the vanquished', as a result of which 'neither the one nor the other have today the political experience that a democratic government demands' (*El País*, 31/03/1977: 23). On the erroneousness of this stereotype derived from Europeans' memory of the Spanish civil war: "Another reason why the Spanish model has been widely admired is that, to outside spectators, the memory of the civil war gave the appearance of a very conflictive and potentially violent society. The *outsiders'* vision, however, did not correspond to the reality of Spanish society in the 1970s' (Linz, Stepan and Gunther, 1995: 87).

<sup>12</sup> Benet wrote in 1976: "what is most flagrant is the realisation that politically and socially these forty years have passed in vain, for both sides; that the two sides that fought in 1936 are still in the same positions, occupying the same trenches and ready to deal - to their adversaries or whoever they put in front of them - the same blows of yesteryear, that neither side has generated new ideas, in keeping with the times, nor have they been able to look around them to learn a lesson that they themselves have not been able to teach them.

It is true that those who made the most pessimistic predictions were not representative of the majority feeling at the time, but it is also true that the levels of uncertainty and fear after the dictator's death were extremely high. Fear, largely due to the traumatic memory of the civil war, revitalised by the possible reaction of the military and Franco's right wing to the new democratising impulse, was very present throughout the process. According to a series of surveys carried out between 1975 and 1977 in Spain, the maintenance of peace, order and stability were the main priorities of Spaniards (Aguilar, 1996: 348- 354). Even when from 1977 onwards justice, freedom and democracy took precedence over the former values, they continued to be very positively evaluated by society. It is striking that even today Spain still ranks highly in both Eurobarometer and *World Values Surveys* in this respect<sup>13</sup>.

If the above data refer to Spain as a whole, the special circumstances experienced in the Basque Country yield even more convincing results. The fear, in this case, was not only due to the memory of the civil conflict, but also to the climate of daily violence that had been experienced, especially in Guipúzcoa and Vizcaya, since the end of the 1960s and, especially, in the 1970s. The tension had been fuelled both by the numerous states of emergency that had been decreed in the two provinces during the dictatorship and by the terrorist violence of the extreme left, the extreme right and, especially, ETA. All this produced a situation of fear and tension in Basque society that explains the following results. Several years ago, Juan J. Linz analysed a survey carried out in 1979 in the Basque Country and Navarre which contained the following question: "It is said that

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can learn. Such is the Spain of today: the same relics of 1936 fed with the same fury" (Benet, 1976: 11).

<sup>13</sup> Between 1982 and 1984, the 'maintenance of order' as the first political priority was chosen by 60% of Spaniards, well above countries such as Northern Ireland, Argentina, South Africa and others with serious problems of violence and public order (*World Values Survey*). However, between 1990 and 1993, the three aforementioned countries would choose this option in a higher percentage than Spain. With respect to the Eurobarometer, an average of the values obtained in all the countries between 1970 and 1992 (in Spain data only began to be collected from 1985 onwards), places Spain in first place in Europe when it comes to opting for "maintaining order in the nation" as the first option, with almost 50% of responses in favour (the European average being 38%).



some people are afraid to take an active part in politics. Would you say that today, in this locality in general, people are (...) afraid to take an active part in politics? According to this author, "half of the [Basque and Navarrese] population perceived quite a lot of fear in their environment" (Linz, 1986: 16-17), which is very significant, especially if we bear in mind that in 1979 the second democratic elections had already taken place and the new Constitution (known as that of "consensus" and "reconciliation") had been approved<sup>14</sup>.

Fear of confrontation is precisely one of the most important elements in understanding the attitude of the main actors involved in the process of change and in the institutional design that crystallised during this stage. As Colomer (1998: 174-5) states, "many decisions in the transition period were taken with a strong aversion to risk (limits on street actions, *absence of reprisals*, predilection for formulas of institutional stability)" (italics mine). Risk aversion" is a fundamental variable that has been especially valued in game theory<sup>15</sup>. According to some authors, if in a bargaining process the two main participants "have equal attitudes towards risk, the final outcome will be symmetric. However, if they have different attitudes towards risk, the outcome will be asymmetric. In particular, the more risk-averse a player is, the less he will get out of the bargain. The less willing he is to risk the possibility of disagreement being realised, the more concessions he will make" (Sánchez-Cuenca, 1995:251). We believe it may be interesting to try to adapt some of these theses to the Spanish case, the negotiating process being the transition and the main actors being the reformists of the dictatorship and the moderates of the opposition<sup>16</sup>.

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<sup>14</sup> Today, the Basques are still the people who are most afraid of expressing their political ideas in public. The author of this work has analysed a series of surveys in this respect, in which the Basques are systematically the least free to express their ideas publicly. This fear, which at the beginning of the transition was much more related to police repression and extreme right-wing violence, is gradually being explained by the iron social control exercised by the terrorists and their entourage over Basque society (Aguilar, 1999).

<sup>15</sup> According to Morrow: "risk-averse actors prefer bets with less variation in outcome. Moreover, risk-averse actors prefer certain bets that have less risk and generate lower expectations than others" (Morrow, 1994: 36). An alternative theory to explain decision-making in high-risk circumstances is the so-called "prospect theory" (Levy, 1992).

<sup>16</sup> From a different perspective, see the study on the impact of fear on politics by Corradi, Weiss and Garretón (1992).

Both some sectors of the extreme right and, to a lesser extent, others of the extreme left in the 1970s would have preferred some kind of violent confrontation -in fact, in both cases they resorted to terrorist practices- in order to prevent the establishment of a liberal-style democracy in Spain. However, precisely those groups that were much less sensitive to the threat of civil confrontation, as well as being very much in the minority, were virtually absent from the negotiating process. What needs to be discerned is which of the two main actors in the transition negotiations was more risk-averse. According to game theory, risk aversion is usually determined by the different resources of the actors<sup>17</sup>. According to the above, as Spain underwent a transition negotiated from within the regime, it seems obvious that it was the regime's reformers who retained the main levers of power, meaning that the moderate opposition was, on many occasions, obliged to follow the lead of the reformers, otherwise they risked being left out of the change that was being forged. This helps to explain why the opposition gave ground precisely on those issues related to the past that could arouse the most tension in the Armed Forces, which had the greatest power to subvert the process and where, logically, the reformists of the regime had much greater influence than the opposition leaders<sup>18</sup>.

For some authors, such as Colomer (1998: 177): "the initial advantage of the ex-Francoists and the subsequent pact with the anti-Francoists *avoided the settling of scores and reprisals* against the former authoritarians. The policy of 'national reconciliation' entailed amnesty for the

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<sup>17</sup> For example, as Sánchez-Cuenca notes, "the economic power of agents determines their bargaining power by making them more or less risk-prone" (Sánchez-Cuenca, 1995: 251).

<sup>18</sup> According to Samuel Huntington, there are basically three types of transition: "transformations" (or reforms), which "take place when the elites in power take the reins in the democratisation process"; "replacements" (or ruptures), which "occur when opposition groups lead democratisation and the authoritarian regime has collapsed or been defeated"; and finally, "transplacement" (...) which "occur when democratisation results largely from the joint action of government and opposition groups" (Huntington, 1991: 114)... which "occur when democratisation results largely from the joint action of government and opposition groups" (Huntington, 1991: 114). Most researchers tend to include Spain among the models of transformation, as it was the reformist elites in Franco's government who decided to push through the first reforms. Of particular importance was the Law for Political Reform (approved by referendum in December 1976) which, in addition to the self-dissolution of the Francoist Cortes, enshrined a series of fundamental rights and outlined some of the basic features of the new political institutions that were to be created. However, once the law was passed, the transition came closer to the third model, which consisted of a process of negotiation between the government and the opposition. On these issues, see also Colomer (1996).

The "anti-Francoists and amnesia for the Francoists, that is, the *renunciation of subjecting the political behaviour of the past to judicial proceedings*" (italics mine). Indeed, under the emotional appeal to "national reconciliation", a thick veil was drawn over the past and it was accepted that the acts of institutional violence committed during the dictatorship would go unpunished. In exchange, reformers from the authoritarian regime agreed to release all political prisoners, legalise the Communist Party of Spain (PCE) and hold genuinely democratic elections in June 1977<sup>19</sup>.

Apart from the different resources of the main actors, it seems that both were - due to the general fear of the threat of a coup d'état that could degenerate, as in July 1936, into civil war - sufficiently risk-averse<sup>20</sup>. This fact, however, facilitated the negotiation process. Some interpretations point out that "the involutionist threat did not take long to encourage reformists from Franco's regime and opposition groups to cooperate more closely" (Rodríguez, 1997: 492). In these circumstances, it also tends to be more likely that solutions not entirely satisfactory to any of the parties involved will be accepted so long as the most undesirable outcome - in this case, civil war - does not occur. As a consequence of this fear, actors may self-limit their demands even beyond what is necessary, although this is not easy to envisage while immersed in situations of great uncertainty such as transition processes.

In the Spanish case, it took a few years before the electoral weakness of the Spanish extreme right became evident (in the elections of 1977, 1979, 1982 and in all the elections of the 1980s and 1990s).

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<sup>19</sup> For some, this form of negotiated transition: 'It helped to legitimise the new regime in the eyes of many Francoists by initiating political change within the formal procedures established by Franco's own regime, allowing important sectors of Francoism to play an active role in the reform process, rather than being sidelined as resentful enemies of change or as victims of a *political purge*' (italics mine; Gunter, Sani and Shabad, 1986: 43). Przeworski also stresses the importance in negotiated transitions of providing a series of guarantees to those who are to leave power so that they do so peacefully and are not tempted to subvert the process (Przeworski, 1988 [1993]).

<sup>20</sup> Perhaps it should be made clear that there were several possible risks. The fear of a coup d'état and, as a consequence, a generalised confrontation, probably affected both actors equally. However, the risk of being marginalised from the negotiating process obviously affected the least well resourced, i.e. the democratic opposition, the most. Nevertheless, the regime's reformists were the first to be interested in attracting the latter in order to give democratic legitimacy to their liberalising political initiatives.

The right-wing extremists (Agüero, 1995: 179 et seq.; 191-3; 197)<sup>21</sup>. However, after the second electoral failure in 1979, the extreme right embarked on the so-called "strategy of tension", aimed at destabilising the democratisation process, which made the threat of revolution sufficiently credible that manifestations of political violence of various kinds were the order of the day (Rodríguez, 1997: 462 ff.)<sup>22</sup>.

However, for an aversion to the risk of confrontation to exist in a generalised form, to the point of conditioning the preferences of the main actors in the game, the possibility of it occurring must be sufficiently credible. In Spain in 1975, the memory of the traumatic confrontation of the 1930s existed (although it was mostly transmitted and not lived, due to generational change). What enabled this memory to be activated with sufficient force and conviction were those situations of violence in the 1970s that made it possible to evoke that event. The memory of the only previous democratic experience, the Second Republic, and its disastrous end, the civil war, was revived precisely because of the climate of violence and confrontation that took place during the first months of the transition<sup>23</sup>.

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<sup>21</sup> Even so, when an attempted coup d'état took place in February 1981, fear of its consequences paralysed society. Only after the attempted coup was disarticulated did society regain its nerve, which is when a large demonstration in support of democracy took place, one of the most massive mobilisations ever to take place in post-Franco Spain.

<sup>22</sup> Accounts of the transition have tended to place more emphasis on the terrorism of ETA (*Euskadi Ta Askatasuna*) than on that of other extreme right-wing organisations, no doubt because of the much higher number of victims attributable to the former, its greater duration and political entity. However, between 1976 and 1981, the attacks carried out by the latter resulted in a total of 72 deaths (Shabad and Llera, 1995: 441), although another source has counted only 39 (Soto, 1996: 366). Several researchers have documented the infiltration of some international right-wing extremist organisations into Spain in the 1970s, as well as the impunity with which they acted during the transition, given the connivance of several high-ranking members of the police forces with them. Other authors have referred to the "strategy of tension" which, according to them, was implemented at the time (Muñoz, 1982; Rodríguez, 1997). According to Rodríguez, this strategy initially consisted of provoking street riots, carrying out terrorist actions and deliberately abandoning the defence of public order in order to attribute the resulting chaos to the advent of democracy. Subsequently, faced with the successive electoral failures of the extreme right-wing parties, some of their more radical sympathisers concentrated their efforts on preparing a coup d'état against the young democracy (Rodríguez, 1997: 462 ff.). Xavier Casals disagrees with this widespread view, which he calls "conspiratorial" and "plotting". According to Casals, "despite repeated allusions to the existence of 'black plots' that planned notorious terrorist episodes during this period, the reality shows that on very few occasions was there a tactical use of violence, and even rarer were those in which it was strategic" (Casals, 1998: 201). Rather, "except in limited cases (...), they were autonomous and even spontaneous initiatives" (Casals, 1998: 203). The infiltration of the intelligence services by several of these extremist organisations, despite having been systematically denied by the then Minister of the Interior, Rodolfo Martín Villa, seems to be beyond doubt, since "it is common for the aggressors in ultra-right-wing crimes to have - or to have had - relations with police or intelligence services" (Casals, 1998: 205).

<sup>23</sup> Many political scientists have underlined the importance that the articulation of a serious conflict can have as a stimulus to the democratisation process. See, in addition to the aforementioned Rustow, the works by Arend

In contrast to what is often said of the Spanish case, which has gone down in history as the *peaceful* transition par excellence<sup>24</sup>, it is worth noting that there were more than 460 violent deaths in the period between 1975 and 1980 alone. According to some sources, some 400 people died in terrorist attacks of various kinds during these six years (Reinares, 1990: 390)<sup>25</sup>. On the other hand, the total number of victims in the street demonstrations that took place during this period is 63, more than half of them in the Basque Country (Adell, 1997). As Nancy Bermeo rightly points out, departing from explanations based on the necessary moderation of the processes of political change: "The pacts between the elites were indeed crucial for the democratisation of Spain, but these pacts were articulated in a situation in which extremism and moderation existed simultaneously (...). 1976 was also a year of widespread violence and incessant mobilisation. Scholars have placed so much emphasis on the comparatively peaceful nature of the Spanish transition that it is easy to forget its violent elements" (Bermeo, 1997: 309).

All of the above is essential to understand the anomalies of the Spanish case compared to others of the so-called "third wave" of democratisation. The absence, not only of political justice measures, but even of public debate around them cannot be explained without taking into account the perception of political and social actors, which is largely marked by the traumatic memory of

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Lijphart on consociational democracies.

<sup>24</sup> Not only the most laudatory authors of the transition, but even the most critical, such as Colomer, refer to "the scarcity of violence" (Colomer, 1998: 180). It is true that, compared to other cases, Spanish political change can appear "calm". For example, as the same author argues, "the peaceful and negotiated transition of 1976-81 contrasts sharply with the unstable process and violent outcome of (...) the Second Republic" (Colomer, 1998: 11). Huntington also stresses that, compared to others, the "third wave" transitions that took place in southern Europe were especially "peaceful" (Huntington, 1991: 194-5). In short, many authors stress that "the peaceful and evolutionary character of the transition contributed greatly to the stability of the current democratic regime" (Gunther, Sani and Shabad, 1986: 14). While there is some truth in such assertions, they might also be incurring a certain retrospective fallacy, for the ultimate success of the process should not make us forget the violence that took place during the transition to democracy.

he took with him. How else can one understand that the memory of something that had happened forty years earlier was so present, bearing in mind the generational change that had taken place since the war? We believe that this memory could only be activated so strongly because of the abundant episodes of political violence that took place at the time. The contrast with the Greek and Portuguese cases is particularly relevant here.

<sup>25</sup> If we consider the total number of people killed in terrorist attacks of various kinds, we obtain a figure of 860 between 1968 and 1991. Seventy-five percent of these deaths were caused by ETA (Shabad and Llera, 1995: 441).

The resulting desire to forget helps to explain the reformist rather than rupturist model of political change taking place in Spain. The resulting desire to forget helps to explain the reformist, rather than rupturist, model of political change taking place in Spain<sup>26</sup>. It is therefore logical that those who said they felt the least fear - according to the surveys analysed by Linz (1986: 17), the Basque nationalists - were also the least inclined to forget<sup>27</sup>, the ones who valued "order" and "peace" the worst<sup>28</sup> and the most critical, by far, of the Spanish model of transition, precisely because their desire for a radical break with the past was more intense and their rejection of the dictatorship much greater<sup>29</sup>.

The initial negotiating weakness of the democratic opposition platforms meant that they shifted from calling for a radical "break" with the existing regime to demanding a kind of "agreed reform". For many authors, this strategic shift by the opposition constituted a major turning point.

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<sup>26</sup> Only in 1999, following the 60th anniversary of the end of the Spanish civil war, was a bill tabled by left-wing and nationalist political parties to condemn the "military uprising" of 18 July 1936 debated in Parliament. This text was not finally approved because it was opposed by the ruling party (Partido Popular). The historical inaccuracies it contained, as well as the existence of a certain degree of political opportunism on the part of those who presented it, are exposed in an article by Santos Juliá (*El País*, 19/9/1999: 20). For some, the lack of consensus on the past is extremely discouraging ("El problema profundo y no resuelto, el que debería despertar ya algunas alarmas y dar ocasión a un debate profundo y general, es que la democracia de 1978 sigue sin encontrar una perspectiva para narrar el pasado de los españoles, de todos los españoles", José María Ridao, *El Mundo*, 19/11/1999: 22). The contrast with the recent debate in Chile on the reasons for Pinochet's coup d'état, which, unlike the Spanish case, was brought to the upper house by the Pinochet right precisely to legitimise the uprising, is very curious. In this debate, also in contrast to the Spanish case, it was the ruling party that thought it was neither healthy nor in keeping with a pluralist democracy to try to reach a consensus on a single text about the past.

<sup>27</sup> In the Basque Country during the last years of the dictatorship, "the personal experience of the repression of the state of emergency, the trials, the death sentences, the inevitable but always annoying security measures, the mobilisation of the people and of different elites (...) in favour of amnesty, created a climate of hostility to the State (...). A large sector of the Basque population was unwilling to forget that past and look to the future. If the Basques and Spaniards want to create the conditions for democratic coexistence in a State of Autonomies, they will have to start by forgetting the recent past under Franco and the violence under democracy" (Linz, 1986: 663).

<sup>28</sup> According to the 1975 FOESSA Report, although 80% of all those interviewed agreed with the phrase "In Spain, the most important thing is to maintain order and peace", only 67% of Basques thought the same.

<sup>29</sup> While in 1994 more than 80% of Spaniards as a whole said they were proud of how the transition had been carried out, less than 50% of Basques thought the same. On the other hand, when in 1985 more than 45% of Spaniards said that Francoism had been partly good and partly bad for Spain, only 20% of Basques agreed, and more than 55% of them said that Francoism had only been bad for Spain. Finally, while in 1985 only 17% of Spanish society acknowledged that they would have liked things to change quickly and radically after Franco's death, 27.5% of Basques would have preferred it (Aguilar, 1999).

The move away from the rupturist line, however, meant the subsequent abandonment of certain institutional reforms that, had they been carried out successfully, would probably have led to a better functioning of democracy. However, the move away from the rupturist line entailed the subsequent abandonment of certain institutional reforms that, had they been successfully implemented, would probably have led to a better functioning of democracy. Since the main lesson that most of Spanish society had learned was that the civil war should "never again" be repeated and that it was now a question of articulating a process of "national reconciliation", all efforts were directed towards achieving a consensual institutional design (the 1978 Constitution) that would avoid incurring the mistakes of yesteryear. To this end, politicians embarked on a long and tense constitutional process and the resulting constitutional text was characterised, among other things, by the governmental stability favoured by its articles. However, this political apprenticeship was, in turn, based on a feeling of collective guilt for the atrocities of the war<sup>30</sup>, without which the mutual and reciprocal amnesty that the political contenders ended up granting each other, i.e. the absence of political justice, cannot be understood<sup>31</sup>. Regardless of who bore greater responsibility for the outbreak of the civil war, none of the ideological heirs of the two opposing sides at the time had any particular interest in intensively revising that past.<sup>32</sup>

Today, it is clear that a break with the past has indeed taken place, as Spanish democracy today is undoubtedly consolidated and its legitimacy is comparable to that of many other European countries (Montero, Gunther and Torcal, 1998: 16).

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<sup>30</sup> This sense of collective guilt is based on the abundant episodes of unjustifiable violence that occurred on both sides during the civil war. This contrasts with the Argentine and especially the Chilean cases, where the vast majority of crimes were committed by one side alone and without an explicit declaration of civil war. The periods of exceptionality experienced during wars - where ordinary legislation is always suspended and the open use of violence is generalised - allow crimes committed during war to be treated differently from those committed during periods of supposed normality or undeclared war.

<sup>31</sup> At the first meeting of Spanish opposition groups from the interior and in exile, held in Munich in 1962, no one even considered the possibility of political justice measures after the end of the dictatorship.

<sup>32</sup> Among Basque nationalists, as I have explained in another work, there was no such feeling of collective guilt for the war, because in the subsequent reworking of this event by the nationalist elites, the "Basque people" as a whole appeared as the main victim of a war that was alien to them (Aguilar, 1998).

Moreover, it is also true that the transition itself represented a break with the traditional way of proceeding in Spain whenever there was a change of political regime. In fact, the current democracy is the only Spanish regime in this century that has not demanded legal and political accountability from the leaders of the previous regime<sup>33</sup>. The aim was to put an end to a historical inability to coexist peacefully with the adversary to which two centuries of military pronunciamientos, civil wars, dictatorships and political instability were attributed. Perhaps it is precisely for all these reasons that the Spanish transition ended up being so highly evaluated. Apart from its undeniable achievements, the expectations it had aroused were somewhat more pessimistic than in other cases since, up to that point, Spaniards had been incapable of combining freedom with harmonious coexistence. Only in this way can it be understood that the process of change that took place in Spain ended up becoming a model of "peaceful" transition, ignoring the moments of very serious tension up until the first democratic elections were held in mid-June 1977 and even afterwards.

### **The possibilities of retroactive justice**

Many factors help to explain why political justice measures are adopted in some countries and not in others. The possibilities for trials, purges and the setting up of commissions to investigate the truth of what happened vary greatly from one case to another. And not only, as we have already seen, according to the type of transition, reformist or rupturist, that takes place<sup>34</sup>, but also according to other factors, among which the magnitude of the violence is one of the most important.

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<sup>33</sup> I am grateful to Miguel Martorell for pointing out to me that not only did the Second Republic demand accountability from the politicians of Primo de Rivera's dictatorship and Francoism did the same with the Republicans, but that the early Republican authorities also demanded political and legal accountability from the Restoration regime. One of the first measures adopted by the Republican authorities was the approval of an amnesty for all political prisoners which, unlike the one that would be approved in 1977, did not include those responsible for the previous dictatorship. On the contrary, the Constituent Courts of the Republic created a special Commission for the attribution of political responsibilities and the subsequent prosecution for crimes, almost always related to the abuse of power, committed during the previous regime. It was this commission that condemned the King for high treason and presented, in June 1932, a report with a series of defendants and convictions that would be harshly criticised even by many Republicans (Payne, 1993: 40-42, 69-70, 73 et seq.).

<sup>34</sup> Huntington's conclusion is that whether or not processes of political justice take place has less to do with moral debates and more to do with the actual distribution of power among



The main factors to be taken into account are the nature of the repression itself<sup>35</sup>, its proximity or remoteness at the time of political change<sup>36</sup>, the residual strength of the authoritarian institutions, the type of activities previously deployed by the democratic opposition and the possibility of clearly identifying those responsible for the repression<sup>37</sup>.

None of the above, however, justifies adopting a deterministic view of the processes of change. It is true, as Colomer states, that "the initial structures, including the political structure of the previous authoritarian regime, impose certain limits on the number and availability of alternatives to choose from", but it is also true that "these structures allow for different decisions and can produce different results depending on the initiatives, strategies and fortunes of the various political actors" (Colomer, 1998: 12). Moreover, not only were there institutional conditioning factors inherited from the previous regime, but there were also the wishes of a society such as Spain's, which demanded, by a majority, that a peaceful, gradual change should take place without a sharp break with the past. This society preferred to pretend to forget the past rather than demand any kind of accountability for it. Their political behaviour showed this, and the results of the polls bear this out.

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different actors. Thus, in most of the cases he analysed: "Justice was a function of political power. Politicians from strong authoritarian regimes who voluntarily ended their mandate were not prosecuted; politicians from weak authoritarian regimes that collapsed could be punished as long as they were swiftly tried by the new democratic government" (Huntington, 1991: 228).

<sup>35</sup> Deaths in a declared war have different political and social consequences than those resulting from a very intense and protracted "dirty war", such as the one that took place in the Southern Cone of Latin America. In this paper we cannot elaborate on the different implications of both types of violence. Some interesting reflections on the characteristics of civil wars and their peculiarities with respect to other types of political violence can be found in Malefakis ([1986] 1996).

<sup>36</sup> It should be remembered that criminal legislation usually stipulates that the statute of limitations for crimes expires after a certain number of years (in the Spanish case, thirty) and, given the time that had passed since the most repressive stage of Franco's regime, criminal responsibility for most of the deaths that occurred had already expired. Nevertheless, after 1945 there were some shootings and, albeit sporadic, certain episodes of dirty warfare against the "maquis". On the number of victims resulting from this guerrilla activity, see Linz (1995: 177). Finally, several episodes of violence also took place during the states of exception declared in the last years of the dictatorship. According to Cazorla: "Extra-legal repression, which continued with impunity, was carried out both by private individuals and by members of the police, the army or the Falange. In the first case, local elites sought revenge for past grievances. In the second, police investigations were accompanied by torture, violence, coercion and murder, particularly when dealing with guerrillas or fugitives" (Cazorla, 2000: 274).

<sup>37</sup> At this point we are faced with the added difficulty of the destruction of much of the empirical evidence of the repression which took place, with the greatest of secrecy, after Franco's death. See the article "Ante la destrucción de los archivos oficiales" (*El País*, 9/4/1978).

same results<sup>38</sup> .

With regard to the political parties, the two main platforms of the democratic opposition (*Junta Democrática*, led by the PCE, and *Plataforma de Convergencia Democrática*, led by the PSOE), even before they unified in March 1976 (in *Coordinación Democrática*), made hardly any demands for political justice<sup>39</sup> . For example, the *Junta's* programme of June 1974 included, in addition to the "absolute amnesty", the "restitution to the workers' movement of the patrimony of the Vertical Union", its priority objective being to "peacefully ensure the transition" (Chao, 1976: 287-8). A year later, the *Platform* proposed in a manifesto "the immediate release of political and trade union prisoners and the return of exiles" (Chao, 1976: 311). In the joint communiqué of *Coordinación Democrática*, the signatories expressed their firm will to achieve the "democratic rupture" through actions "of a peaceful nature" and insisted, once again, on the need for amnesty (Chao, 1976: 315). They all declared themselves "rupturists", demanded the constitution of a provisional government and the holding of a referendum to decide on the form of government (monarchical or republican).

Only by analysing the specific texts of each party is it possible to observe a more concrete approach in this respect, albeit always before 1977. The Spanish Socialist Workers' Party (PSOE), one of the main political formations of the moderate opposition, advocated in 1974 the "dissolution of all repressive institutions", the "return of all rights to the people dispossessed for their political and trade union actions against the dictatorship" and the "restitution of the assets plundered from the political and trade union organisations suppressed by the dictatorship". Convergence

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<sup>38</sup> Nor was there any public debate on the matter. The newspaper *El País* pointed out in its editorial on the day of the referendum on the Law for Political Reform that it had to be accepted that, in order to emerge from Francoism, it was necessary to resort to authoritarian and diffuse procedures, but that what was really important was that "serenity and civility (...) must accompany electoral acts" and that, from now on, the appropriate mechanisms had to be approved to change the situation.) must accompany electoral acts" and that, from now on, the appropriate mechanisms had to be approved to change the situation, including the electoral law, the legalisation of parties, the recognition of nationalities and freedom in electoral campaigns. At no time is there any mention, as a necessary requirement for the democratisation of the country, of the purging of institutions, trials against human rights violators or the establishment of commissions of enquiry (*El País*, 15/12/76: 8).

<sup>39</sup> Neither did the authors who participated in a book entitled *Las reformas urgentes* which was published in 1976. While this important publication addressed the essential reform of certain laws (especially criminal laws) and institutions (judicial and administrative) and advocated issues such as political amnesty and the return of exiles, no one raised specific political justice measures (Figueró et al., 1976).

In 1975, the Iberian Socialist Party, later the Federation of Socialist Parties (FPS), demanded the "suppression of all repressive laws and institutions inherited from Francoism" (Sánchez Navarro, 1998: 159 and 161). There is thus a diffuse commitment to the "dismantling" of the authoritarian regime which is posited as a necessary prerequisite for the real democratisation of the country, but which consists more in the introduction of democratic forms of functioning than in the expulsion or prosecution of those guilty of repression (González and Guerra, 1977: 20-21, 36, 76, 123-4); Carrillo and Sánchez-Montero, 1977: 47-48, 70, 104)<sup>40</sup>.

The most repeated demands of the moderate opposition, which were not abandoned during the reformist stage, were, in addition to amnesty, the abolition of special jurisdictions (Esteve, 1977: 205-207) and the return of seized trade union and political assets. Everything related to the dissolution of repressive bodies and the return of plundered assets to individuals (by the Law of Political Responsibilities of 1939)<sup>41</sup>, tended to be left to one side<sup>42</sup> and political justice measures were never sufficiently clear<sup>43</sup>.

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<sup>40</sup> In a parliamentary speech in September 1977, Felipe González, leader of the PSOE, called for the resignation of the Minister of the Interior and the Civil Governor of Santander over the actions of the Forces of Public Order at a demonstration in favour of regional autonomy. In his speech he refers to "the widespread feeling throughout the length and breadth of our country that little or nothing has changed since 15 June" (referring to the first democratic elections). González states, however, that the Socialists do not seek, "as was done in the early days of the Franco regime, either suppressions or the creation of different general corps. We simply want the Forces of Public Order to be placed in the role that corresponds to them" (quoted by Ortzi, 1979 I: 50-1).

<sup>41</sup> Under this law, the properties, both private and institutional (parties and trade unions), of all those suspected of having collaborated with the Republican side could be seized. The administrative sanctions contemplated by this law would not be annulled until December 1975 (Baena and García Madaria, 1982: 315).

<sup>42</sup> Again, the exception to this rule is to be found in the Basque Country, for on 30 October 1984 the Basque Government passed a law on the "Reversion of Seized Assets and Rights", the prologue to which read: "Several provisions have been enacted in recent years to correct as far as possible the consequences of all kinds arising from the Civil War. There was, however, a lack of legislation that openly confronted the problem arising from the seizures carried out on the property and rights of natural or legal persons who were dispossessed of them under the protection of exceptional legislation which, having arisen in the early days of the war, has prolonged its effects long after its formal repeal, thus perpetuating the most elementary principles of a democratic society" (Law of 30 October 1983, published in the Official Gazette of the Basque Country No 188). In the rest of Spain, although part of the trade union and political assets were returned, it does not appear that the possibility of returning the seizures was contemplated. carried out for private individuals.

<sup>43</sup> In view of the 1977 elections, the PCE "does not speak of dissolution, but of 'greater reorganisation'". The PSOE, for its part, argued that "those elements that are really repressive should be punished" (Esteve, 1977: 175, 212).

It was the extreme left-wing parties and the radical Basque nationalists<sup>44</sup> who, as well as refusing to join the unitary platforms of the opposition, virulently rejected the new reformist strategy of the majority forces and continued to maintain the demands that had been abandoned by the other political forces<sup>45</sup>. The Basque radicals, united under the acronym KAS (Coordinadora Abertzale Socialista) formulated, in a generic way, the "*demand for responsibilities*" and never eliminated from their demands the "dissolution of the repressive bodies" (italics mine; quoted by Muñoz Alonso, 1982: 69)<sup>46</sup>. Other radical proposals came from the extreme left, such as the Partido del Trabajo de España, which demanded "the nationalisation of the wealth of the groups that openly oppose the realisation of this constituent process", which is what the PTE calls "punitive expropriations" (Cruzado, 1977: 263-265)<sup>47</sup>. Different formations, such as the Revolutionary Communist League (LCR), continued to maintain the "dismantling of the Regime and all its institutions and repressive bodies" in their programmes (Cruzado, 1977: 289; Laiz, 1995: 242-3). The latter party, of a Trotskyist ideology, would take up these demands with special emphasis after the attempted coup d'état of 1981<sup>48</sup>. The Marxist-Leninist Communist Party of Spain (PCE m-l), one of the most extreme,

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<sup>44</sup> Proof that these issues aroused particular sensitivity in the Basque Country in general is that even the moderate leaders of the Basque General Council, the pre-autonomous government body, presented a 15-point plan on 8 November 1978, which included that this body should have powers "in matters of public security", that "measures leading to the establishment of a Basque Autonomous Police" should be established, that "all widows, orphans and mutilated people of the civil war" should be legally equalised and, finally, that the parties and trade unions should be given back their patrimony (quoted by Orzi, 1979 II: 34).

<sup>45</sup> In their 1977 election programmes, both the Communist Movement (MC) and the Workers' Revolutionary Organisation (ORT) advocate "the dissolution of the Forces of Public Order" (Esteve, 1977: 175). But only the Partido del Trabajo de España (PTE) said openly in these elections: "We propose the purge of commanders and elements who collaborate with or protect the fascist gangs, and work in favour of a coup d'état" (Esteve, 1977: 212). However, what is really significant is that, even on the few occasions when an institutional purge is called for, it refers to the repressive actions that the police forces are carrying out in the present and not to those they perpetrated in the past.

<sup>46</sup> "Police activity in the years immediately after [Franco's death] was such that it ended up spreading an unmitigated rejection, expressed in the well-known 'Que se vayan' (Let them go) campaign" (Rivera, 1998: 82).

<sup>47</sup> Finally, this party would end up joining *Coordinación Democrática*, abandon its revolutionary aims and participate in the democratic elections, accepting, at the end of 1978, the constitutional text (except for the Basque Country branch, which would support abstention in the constitutional referendum).

<sup>48</sup> This and other extreme left-wing parties took part in a counter-demonstration after the attempted coup with precisely these slogans "against the coup, *purge*" (*El País*, 28/2/1981: 12). Around the same time, Herri Batasuna (HB) equated the Spanish constitutional regime with a military dictatorship (*El País*, 1/3/1981: 8).

The "formation of a People's Army and the destruction of the current one" and the "dissolution and repression of the political parties of the oligarchy" (Cruzado, 1977: 308). It should be noted that these latter parties, besides being very much in the minority, defended a revolutionary ideology that was incompatible with liberal democracy.

But even these radical forces did not usually envisage in their programmes the possibility of "trials" or "truth commissions". Later, once the transition process had been carried out, what they did was to question the new regime, accusing it of continuing the dictatorship and doubting its democratic character. As early as 1977 ETA claimed "that the government is not democratic, but a continuation, reform or change of image of the dictatorship" (Laiz, 1995: 256). At the beginning of the following year, ETA wrote a "Letter to the Basque people" in which it envisaged the "expulsion from Euskadi of the Civil Guard, the Armed Police and the General Police Corps" (quoted by Ortzi, 1979 II: 10)<sup>49</sup>. Herri Batasuna (HB), the political wing of ETA, which came into being in April 1978, began by rejecting the democratic transition as "pure continuity of Francoism" (Laiz, 1995: 276)<sup>50</sup>. In the end, according to some authors, one of the fundamental aspects of the transition is that "no purge of the Armed Forces has been carried out" and that, as a result, "the cadres that Franco wanted remain in command posts" (Morales and Celada, 1981: 8).

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<sup>49</sup> According to the testimony of a radical Basque militant, they demanded the departure of all the armed forces because "they are the ones who have most directly supported the military dictatorship. Educated in the purest repressive line, they are for the Basque people the evocative symbol of 40 years of fascism" (Castells, 1978: 168). For this ideological sector, "the transition has not taken place (...), the transition is simply a readjustment of the Francoist system (...). There has been no rupture with the previous structures and, therefore, it is a flawed process of deception and fraud for the expectations of the people" (Mata López, 1993: 200-202).

<sup>50</sup> Eva Forest, an ETA sympathiser, complains about the "generalisation of torture" despite the political reforms, although she recognises the enormous disproportion with respect to the Uruguayan and Argentinean cases (Forest, 1978: 36- 7). According to her, the torturers in 1978 "are the same as before, sadly known for their long history of repression (...). The same judges, the same officials" (Forest, 1978: 44). Other authors have a similar view, albeit from a different ideological standpoint, when they state that both the centrist and socialist Interior Ministers of the transition "opted for the continuity of the inherited police apparatus, for fear of breaking up the structures of state security". In fact, most of the police chiefs had passed through "the dreaded and feared Brigada Político Social (BPS) of the Franco regime" (Jauregui and Menéndez, 1995: 165). This corps was disbanded in the spring of 1977, but the vast majority of its occupants have continued to work in different police forces under democracy, especially in the State Security Services (CESID). It is well known that some of its agents were involved not only in the attempted coup of 23 February 1981, but also in the "dirty war" cases that came to light in the 1990s (the "GAL case").

The Amnesty Law of October 1977, one of the first political measures approved by the new democratic government with the support of the vast majority of parliamentary groups, basically achieved two things<sup>51</sup>. Firstly, it emptied the prisons of opposition political prisoners, including those who had committed blood crimes. Secondly, a sort of "full stop" law was also approved, albeit with great opacity, for those politically responsible for the previous regime<sup>52</sup>. Most Spaniards are unaware that the Amnesty Law itself contains two articles that prevent the prosecution of torturers and all those who had committed abuses of power during the dictatorship. What was amnestied by these articles were: "The crimes and misdemeanours that may have been committed by the authorities, civil servants and agents of public order, on the occasion or occasion of the investigation and prosecution of the acts included in this law" and "the crimes committed by civil servants and agents of public order against the exercise of people's rights"<sup>53</sup>.

This fundamental fact had hardly any political significance as it was not even explicitly mentioned in the parliamentary debates that led to its approval<sup>54</sup>. Both in the

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<sup>51</sup> On this process, see Aguilar (1997).

<sup>52</sup> One of the authors most critical of the transition states: "The moral victory of the political class that came out of Francoism was to obtain amnesty for its past in exchange for facilitating the incorporation of the opposition into real political life. The first ethical defeat of the democratic opposition was to consider that the only way to achieve integration into real political life was to guarantee impunity for the other side's past" (Morán, 1991: 186-8). Later he will argue: "The capacity for enchantment of any peaceful transition from dictatorship to democracy comes from something as striking as the victims consenting to forget the executioners" (Morán, 1991: 232).

<sup>53</sup> According to some, both the Unión de Centro Democrático (UCD) and the PSOE did their best to "make the new generations forget Franco. Erasing all traces of the dictatorship. The Francoists themselves, in exchange, no doubt, for a veritable 'full stop law' that allowed many historical abuses and corruptions to go uninvestigated, cooperated in this oblivion" (Jáuregui and Menéndez, 1995: 29-30).

<sup>54</sup> In this context, the reflections of Stephen Holmes are crucial. According to him, "By holding our tongues in delicate situations we can secure forms of cooperation and fellowship that would otherwise be unattainable" (Holmes, [1988] 1993: 19). Holmes highlights the implications of different types of "strategic self-censorship", stressing the advantages of not publicly addressing issues on which there will never be consensus and which, instead, can give rise to serious conflicts and even threats of political destabilisation. "Amnesties, in fact, are classic examples of democracy-stabilising 'gag rules' (...). By shelving the past, keeping revenge off the political agenda, the organisers of the new democracy can secure the acceptance of the rules by the elites in the most strategic places, whose cooperation may prove indispensable for a successful transition from dictatorship to self-rule". And he continues with the following reflection, which is highly appropriate for the Spanish context: "Without the existence of an overriding desire to maintain national unity, however, we can assume that opposition groups will not tend to silence themselves on the issues that divide them most radically" (Holmes, [1988] 1993: 27). However, the same author also reflects

Congress and the Senate only mentioned the mutual oblivion and the respective pardon required on both sides. Nor did the most important press of the period allude to the content of these two articles that would prevent, in the future, the initiation of trials against those responsible for violations of the same human rights that were to be enshrined in the new democratic legislation. For many, "democratic Spain must, from now on, look forward, forget the responsibilities and events of the civil war, and disregard the forty years of dictatorship (...). A people neither can nor should lack historical memory: but it should serve to nurture peaceful projects of coexistence towards the future and not to nourish resentment towards the past' (*El País*, 15/10/1977: 6).

This law, which only the right wing and radical Basque nationalism abstained from voting for, meant a "clean slate" for everyone (terrorists and Francoists), and was even praised by moderate Basque nationalists for its "forgetfulness"<sup>55</sup>. In the parliamentary debate on this law, almost all the groups praised it precisely for being an instrument of "national reconciliation", for "closing the past", facilitating its "forgetting" and allowing the opening of a new stage. Even the communists boasted of not wanting to remember the past, of having "buried" their "dead" and their "grudges", and called for an "amnesty for all, regardless of where anyone had been".

It is clear that this mutual amnesty is, to a large extent, promoted by the intense perception of the danger of not amnestying the Francoists as well. The same representative of the Communist parliamentary group commented at the end of his speech: "a year ago it seemed impossible, almost a miracle, to emerge from the dictatorship without serious traumas". The Socialists also insisted on the need to "bury and overcome forty years of dictatorship" and affirmed that the law definitively closed the civil war. Xavier Arzalluz, a member of the Basque Nationalist Party (PNV) and representative of the Parliamentary Group of the Catalan and Basque Minorities, repeatedly insisted on the need to forget, as it was "an amnesty for all, a forgetting of all for all (...), because there have been acts of bloodshed on both sides, also on the other side".

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on the disadvantages of forever silencing certain types of morally reprehensible issues. Moreover, silence, beyond its supposed neutrality, always benefits one of the parties involved.

<sup>55</sup> In the end, there were 296 affirmative votes (93.3%), 2 negative votes (0.6) and 18 abstentions (5.6%), so the consensus was almost unanimous.

power (...). So let's forget everything". Francisco Letamendía, a Basque radical militant, in explaining his abstentionist vote, was the only one who called for a "complementary measure to the total amnesty (...), the replacement of the forces of order inherited from the dictatorship by forces of order dependent on the autonomous powers". According to him, in the Basque Country there was "a psychosis of an occupied zone and it is therefore absolutely necessary for these forces of order to be replaced by others at the service of the autonomous powers"<sup>56</sup>. Finally, the representative of the governing party, the UCD, spoke of the "indispensable and profoundly necessary reconciliation", as well as of overcoming the past.<sup>57</sup>

As we have seen, the discussion of the amnesty law was closely linked to the memory of the Civil War. The aim was to rehabilitate those who were serving sentences, or any other type of sanction, for having fought against an authoritarian regime that had been installed after a military victory. The amnesty, however, although it allowed civil servants to recover their jobs and seniority when it came to receiving pensions, was not applicable to military officials, and neither of the two bodies of civil servants were paid the salary corresponding to the time they had been "separated" from their work.

Those two articles guaranteeing impunity for the Francoists would only be mentioned in political discourse many years later. In the wake of the GAL (Grupo Antiterrorista de Liberación) scandal<sup>58</sup>, the Secretary for Relations with the PSOE, Txiki Benegas, said

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<sup>56</sup> Letamendía himself, under the pseudonym Ortzi, published several works aimed at explaining "the Basque no to reform". In one of these books, he states that "the repression suffered by the Basque Country in the last ten years of this [Franco's] regime was qualitatively superior to that suffered by the rest of the State (...). This created a mutual hatred between the Basque people and the forces in charge of repression, themselves victims of armed resistance, which made them incompatible' (Ortzi, 1979 I: 10). This militant of Basque radicalism refuses to forget, as the main parliamentary parties proposed when defending the amnesty law, until there is a clear break with the past. According to him, "it is clear that the problem of public order cannot be solved as long as the current police forces remain in Basque territory. Peoples are tributaries of their historical memories, and these have left a mark in Euskadi that cannot be erased' (Ortzi, 1979 I: 49).

<sup>57</sup> Journal of Sessions of the Congress. Plenary Session nº 24, 14/10/1977, pp.954-974.

<sup>58</sup> The GAL, as is well known, was created in the mid-1980s with the collaboration of some people linked to the Ministry of the Interior to fight ETA with their own weapons. Although this group originated in the first stage of the socialist government (and the people convicted so far for their links to it were high-ranking politicians in that party), it is true that many of its members were extreme right-wing individuals well connected with the state intelligence services of the previous regime and with some police bodies. Several authors consider this group to be the heir to other ultra-right-wing organisations of the transition period, such as the Spanish Basque Battalion (BVE) and Anti-Terrorism ETA.



that "the only full stop law there has ever been was made in October 1977 by the democrats for the Francoists. In that year we decided not to ask for any responsibility for the 40 years of dictatorship, in order to try once and for all to achieve reconciliation' (*El País*, 6/8/1995: 14). The fact that the memory of this aspect of the law emerges as a consequence of the GAL is by no means accidental since, according to a commonly put forward argument, this anti-terrorist group would not have been able to organise itself if there had really been a purge of the armed forces from Franco's regime.

The human rights violations which took place in the second stage of Franco's regime<sup>59</sup>, although not comparable to those which had taken place in the 1940s, became very frequent at the end of the period, especially in the Basque Country<sup>60</sup>. The numerous cases of torture took place in the context of repressive legislation which, according to the association Justicia Democrática, was even frequently violated by those in charge of administering it<sup>61</sup>. This association, which was founded clandestinely in 1971 by a section of the

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(ATE), who had previously committed assassinations. The collusion between some members of the armed forces and the extreme right has been documented in several studies. In April 1981, Juan José Rosón, UCD Minister of the Interior, responded to an interpellation by Enrique Múgica, a Socialist deputy, "and took the opportunity to state the progress of his department in the control of extreme right-wing terrorism" (Rodríguez, 1997: 451). If we calculate the percentage of the data provided by the minister, we see that in 1977 only 4% of the actions attributed to extreme right-wing groups were finally cleared up; in 1978 the percentage rose to 9%; in 1979, to 54%; and finally, in 1980, to 83%, with a notable increase in the number of detainees. Although this is a positive development (always according to official data), the surprising police ineffectiveness of the early years of the transition lends credence to those who accused some members of the armed forces of collusion with right-wing extremist groups.

<sup>59</sup> On these issues see Linz (1992).

<sup>60</sup> According to Antonio Rivera, "of the 36 people killed by the police in Spain in 1974 and 1975, almost two out of every three were Basques" (Rivera, 1998: 82). The special incidence of the repression of the last Franco regime in the Basque Country will, as will be seen later, have a fundamental importance in the "politics of memory", as it will be demanded in an unequal way by the Basques and the rest of Spaniards. Even some of the authors who have most stressed the "peaceful" nature of the transition acknowledge that "in the Basque Country, the panorama was very different (...). The prolonged constituent period from 1976 to 1979 was marked by continuous mass mobilisations and a self-feeding cycle of violence. In cities such as Pamplona, San Sebastián and Rentería, violent clashes between pro-ETA demonstrators and the national police occurred almost daily, as did the assassinations of members of the forces of public order and army officers" (Gunther, Sani and Shabad, 1986: 443).

<sup>61</sup> According to the association, during the frequent states of emergency decreed in the last years of the dictatorship, the very legislation regulating the duration of these states of emergency and the length of time detainees could be held incommunicado was violated. There are also numerous documented cases of torture under these states of emergency.

The first of its members, a magistracy opposed to the judicial arbitrariness of the Franco regime, took it upon itself to denounce the government's violations of the laws passed by the regime itself. In 1974 they joined the opposition body called *Junta Democrática*; it was not until 1977 that they held their first congress, and even then they did so clandestinely: shortly afterwards they decided to dissolve, as the Spanish Constitution prohibits associations of judges and prosecutors (Sinova, 1984 II: 570). In any case, they never became a major pressure group during the transition.<sup>62</sup>

Most of their working documents were made public after Franco's death together with a paper, dating from January 1977, in which they made a series of proposals to the government, including the following: abolition of the death penalty; criminalisation of torture; abolition of all types of discrimination; unity of the judiciary and subsequent abolition of special jurisdictions; "repeal of the Terrorism Decree-Law and other laws and precepts repressive of the exercise of democratic freedoms"; "immediate control by the courts of the police forces" and "proclamation of total amnesty for politically motivated crimes *and all types of sanctions for governmental infractions of the same nature*, as well as labour infractions" (italics mine; Justicia Democrática, 1978: 310-311). As can be seen, not only was there no call for the adoption of political justice measures (purges, trials or commissions), but even an association of this nature went so far as to contemplate the need to pass the equivalent of a full stop law together with an amnesty for political prisoners.

Despite the unquestionable breadth of the Amnesty Law, which even ended up including trade union amnesty (i.e. the obligation to reinstate those who had been dismissed for political reasons), two very significant groups were left out of it, demonstrating the military's capacity to defend their corporate interests even against the will of the majority of the political class. Those members of the military who had formed a clandestine pro-democracy group, Unión Militar Democrática (UMD), were unable to return to the army, from which they had been expelled<sup>63</sup>. On the other hand

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<sup>62</sup> The reforms experienced in the Spanish judicial system during the socialist period and the absence of purges throughout the transition are dealt with from a comparative perspective in Guarnieri and Magalhaes (2000). See also Ibáñez and Pérez Mariño (1991) and Toharia (1984).

<sup>63</sup> On the UMD military, see, among others, Morales and Celada (1981: 8 ff.).

On the other hand, the ex-combatants of the Republican Army, defeated in the civil war and continually marginalised by Franco's regime, were also unable to reintegrate into the Armed Forces<sup>64</sup>.

The pressure from the military was accepted because the priority at that time was, firstly, not to provoke the army to avoid political altercations and, secondly, to put an end to ETA terrorism (on the rise since Franco's death) and almost all the parliamentary forces, except for the right (represented by Alianza Popular, AP), thought that this could only happen with the approval of an amnesty as broad as that of October 1977, despite its aforementioned limitations. Shortly afterwards, however, ETA would once again commit deadly attacks, which is why the prisons were once again full of its militants. Fear of the reaction of the military, the terrorists' main targets along with the Public Order Forces, was evident throughout the process<sup>65</sup>. Not only did some coup attempts have to be dismantled, but high-ranking army officers did not hesitate to express their displeasure, and even to resign, at certain political measures which, like the legalisation of the PCE, they found particularly undesirable.

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<sup>64</sup> According to Julio Busquets, "the generals prevented the military amnesty", both for the UMD soldiers and those of the Army of the Republic. Rafael Arias Salgado, representative of the Unión de Centro Democrático (UCD) government on the commission in charge of drafting the amnesty law, went to the President of the Government, Adolfo Suárez, whenever tensions arose in relation to the military. As Busquets tells it, on one of the occasions when Arias Salgado went to speak to the Minister of Defence, Lieutenant Colonel Gutiérrez Mellado, on Suárez's instructions, he found the latter "surrounded by a large group of generals, deeply serious (...) and before whom Gutiérrez Mellado was in the presence of a large group of generals (...) and in the presence of whom he found a large group of generals, deeply serious (...)" and before whom Gutiérrez Mellado told him more or less the following: first, that the army had put up with a lot, but that he could not tolerate meddling within it; second, that if the military amnesty was granted, there would be arguments among officers and divisions within the armed forces; third, that as a result he would not be able to guarantee discipline and would be forced to resign; and fourth, that the Supreme Council of Military Justice would invalidate the law (I suppose by not applying it to the petitioners)' (in Sinova, 1984 II: 514-5). According to other authors, "the government's only concern in relation to the armed forces has been to prevent the reactionary reserves entrenched in that institution from constituting an insurmountable obstacle to its reform project" (Morales and Celada, 1981: 11).

<sup>65</sup> According to some theses, 'following the advice of military leaders and the intelligence services, the first PSOE governments practised a policy of promotion to the generalate that avoided any suspicion of possible ideological persecution. The idea was to prevent the involutionist colonels from becoming radicalised' (Jaúregui and Menéndez, 1995: 196).

### **Institutional continuities or the legacies of the dictatorship<sup>66</sup>**

The possibilities of introducing radical ruptures during the transition were considerably reduced after the referendum on the Law for Political Reform, held in December 1976, and the signing, by the government and the main opposition parties, of the Moncloa Pacts in October 1977. The first law established the reformist approach to political change ("from law to law") and the second, in addition to its eminently economic content, consisted of a political part in which certain rights were enshrined and certain reforms were envisaged (above all those relating to the Penal Code and the Code of Military Justice in force). Where the "Reorganisation of the Public Order Corps and Forces" was envisaged, nothing was said about their elimination, purging or total transformation<sup>67</sup>.

In Spain, unlike what happened in some Latin American countries, "the military (...) did not feel the need to seek protection against possible attempts to punish them for offences

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<sup>66</sup> The pioneering study on the legacies of Francoism in Spanish democracy is Malefakis (1982). In terms of political science literature, there are several authors who stress the importance of legacies for a better understanding of political processes. Most neo-historical institutionalists take into account the institutional and cultural legacies of the past (Collier and Collier, 1991; Pierson, 2000; Thelen, 1999; Putnam, 1993). However, this recognition need not be labelled as deterministic as many of these same authors acknowledge that "no legacy lasts forever" (Collier and Collier, 1991: 33). What must be sought are the causes that produce lasting legacies in certain circumstances ("critical junctures"), the reasons for the adoption of a series of institutional channels and not others that are resistant to change ("path dependency"), either because of the "increasing returns" they generate or because they are activities which, once initiated, they have very high replacement costs (Pierson, 2000), or because certain habits and routines, once adopted over a period of time, are very difficult to change (March and Olson, 1989), or because of the learning processes that have been generated (Bermeo, 1992; Hall, 1976; Jervis, 1976; Jervis, 1976; Hall, 1976; Jervis, 1993). Other theses that explain the resistance of institutions to change are those of North (1990, 1998). Finally, Guarnieri and Magalhaes (2000: 3), in their study of judicial systems in Southern Europe, combine two types of explanations: the instrumental (free choice of institutional design by actors guided by their selfish interests and not constrained by the legacy of the past) and the historical legacy (institutional and cultural constraints inherited from the previous stage): "We argue that the outcomes of judicial reform in Italy, Greece, Portugal and Spain were the result of two major factors: the legacies of non-democratic pasts in Southern Europe and the selfish strategies of the political actors involved in the institutional design process."

<sup>67</sup> It should be noted that the right-wing Alianza Popular (AP) party signed the economic pacts, but not the political ones. Moreover, the economic pacts had much greater resonance and were also given greater publicity, as their signing was broadcast live on television, while the political ones were signed two days later in a private act that had little public significance. All this reflects the climate of the time and the explicit (AP) and latent (forces of public order and other "powers that be") resistance to measures aimed at dismantling Francoism, despite the fact that the first democratic elections had already been held. One of the proposals that had not yet been carried out in February 1978 was precisely the reform of the Code of Military Justice (*El País*, 25/10/1997: 23), which was only done in September 1980 (Ley Orgánica 9/1980. Boletín Oficial del Estado n° 9/1980).

past. It had been a long time since the atrocities of the civil war and the problem of human rights had ceased to be contentious issues. The memory of the high number of casualties on both sides in the Civil War was more of an incentive for moderation. In South America, by contrast, the military felt the need to impose safeguards against attempts to prosecute them for human rights violations. While this did not present a problem in the Spanish transition, in South America it was one of the thorniest issues that pitted military and civilian authorities against each other' (Agüero, 1995: 117-118).

Possible measures of political justice, as Agüero says, were not even considered, not only because of the time that had elapsed since the height of Franco's repressive period<sup>68</sup>, but also because of society's fear of the possible reactions of the army and the extreme right. In the absence of social demand in this respect, the already timid initiatives that, as we have seen, had been put forward by the opposition platforms were immediately dropped from their electoral programmes. If national reconciliation was the priority task to ensure peaceful regime change, it is logical that no one dared to propose policies of retroactive justice. However, this same fear also made it difficult to propose institutional reforms necessary for the proper functioning of the democratic system.

One of the most delicate issues of the first years of democracy was not only what to do with the armed forces inherited from the dictatorship, but also how to prevent them from conditioning the transition. They constituted, precisely, the most serious obstacle that the democratic political elites of the time had to deal with<sup>69</sup>. The difficulty of convincing the

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<sup>68</sup> Certainly, the memory of the fratricidal conflict served to foster a spirit of concord and negotiation. The remoteness of the post-war repression served to dissolve certain tensions, since at the time of Franco's death 70% of the Spanish population had not directly experienced the civil war. The highest number of deaths and prison population was found in Spain from the beginning of the civil war in 1936 until 1949. According to the most recent study, 120,000 civilians died in the war, i.e. those who were reprisals in the rearguard. To these must be added all those who died at the front plus those who died in the post-war period. In the end, this gives an approximate figure of 600,000 victims (Juliá, 1999).

<sup>69</sup> Some authors, such as Jaime-Jiménez and Reinares, have focused, far from Gregorio Morán's polemical zeal, on the limits of the transition by analysing the main obstacles that the democratic forces had to overcome (Jaime-Jiménez and Reinares, 1998: 172 ff; Morán, 1991). Although the pressure against democratisation came mainly from the army, the weaknesses of this pressure group due to its disunity and the fact that it was unable to articulate an alternative political project have also been highlighted (Agüero, 1995: 179 ff.).

Armed Forces<sup>70</sup> that they accepted the democratisation process was largely due to the fact that a large part of its highest ranks remained loyal to the memory of Franco and his political legacy. In fact, high-ranking military officers had fought with him during the civil war and their subsequent political evolution, like that of the dictator himself, had been practically nil. Immediately after Franco's death, the fact that the coronation of King Juan Carlos I took place, as he had predicted, and that Franco's political elite remained in power, greatly reassured the military.

The gap between the armed forces inherited practically intact from Franco's regime and the new democratic situation was often evident. On many occasions, the police acted with unnecessary forcefulness, given that they were accustomed to repressing what under Franco had been considered disturbances of public order. In this way, demonstrations that today would not pose a problem then often ended in serious clashes, sometimes fatal, between police and demonstrators<sup>71</sup>.

This Francoist loyalty allows us to understand the irritation produced in the Armed Forces by three factors that were very present in the transition. Firstly, the multiple mobilisations and strikes in the early years, given that the maintenance of "public order" had been the main cause of the "public order".

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<sup>70</sup> According to the testimony of one military officer, "around 70 percent of the senior army officers were totally pro-Franco in their ideology, nostalgic for the previous regime and therefore in favour of a complete halt to the incipient democratisation process underway". Within the Army General Staff, the Intelligence division (secret services), "was a fiefdom of the 'ultras'" (Martínez Inglés, 1994: 33-4). According to the view of a member of the Armed Police, who had been dismissed from the corps for his membership of the UMD and later rejoined it as a volunteer in the Basque Country, "the General Staff of the Armed Police and, in general, the military commanders of the Inspectorate were against the reforms sought by the Ministry (...). In truth, it was just one more pretext of the *ultra* sectors of the army who used it, along with others, to oppose the progress of democracy" (Delgado, 1996: 16). Further on, he refers to the "notorious and regrettable actions of both the Guardia Civil and the Armed Police, which raised all kinds of criticism", in the face of which "the Executive felt compelled to introduce the necessary changes in the Security Corps, which maintained the attitudes and procedures used during Franco's dictatorship. The cases of Tolosa, Vitoria, Montejurra, Carmona and the torture of Amparo Arango and Téllez by the Guardia Civil, and those of Tudela, Pamplona and Rentería, by the Armed Police, were the ones that had created the greatest alarm and social repulsion" (Delgado, 1996: 17). He frequently refers to the "mismatch between the state repressive apparatus and the new democratic society" and recognises that the very serious mistakes that were made "increased the number of ETA members and irreversibly alienated Basque society from the State Security Forces" (Delgado, 1996: 17 and 21).

<sup>71</sup> The bewilderment of the police in the face of the great transformation that the notion of "public order" underwent in democracy and the absence of fundamental reforms in the police force have been dealt with by Jaime-Jiménez and Reinares (1998).

was one of the most tenaciously pursued objectives during the dictatorial period<sup>72</sup>. Secondly, the autonomist demands of the nationalist parties, and also of the leftists<sup>73</sup>, since another of the great obsessions of Franco's rhetoric, made more acute by the military, was to maintain the unity of Spain at all costs and to avoid any tendency to decentralise political and administrative power. Finally, the multiple terrorist attacks, especially those carried out by ETA, since it was precisely the members of the Forces of Public Order who suffered most directly<sup>74</sup>. According to data provided by the Ministry of Defence<sup>75</sup>, ETA fatalities in the police forces and the army amounted to almost 60% of the total between 1968 and September 2000<sup>76</sup>, distributed as follows: Civil Guard: 25%; National Police: 18%; Army: 12%; Local Police: 2.8%; and *Ertzaintza* (Basque Autonomous Police): 1%<sup>77</sup>.

Among the reforms carried out in the army between 1977 and 1982, in addition to the successive attempts at depoliticisation (since the military were prevented from participating in any kind of political activity), were those relating to public order, as well as to "military symbology and ethical codes, by means of four laws, which affected the Spanish Coat of Arms, the Swearing in of the Flag, the Ordinances and the Code of Military Justice" (Torre, 1996: 293). The latter "subordinated military justice to the civilian justice system, which made it possible to appeal the sentences of the military courts" (Torre, 1996: 293).

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<sup>72</sup> "The policy of public order dominated all other aspects of national policy during Franco's regime. One need only think of the absolute dedication of the Civil Governors to this matter" (López Garrido, 1987: 8).

<sup>73</sup> At the beginning of the transition, they went so far as to demand the right of self-determination for the peoples of Spain.

<sup>74</sup> The existence of terrorism was also used during the transition, and even afterwards, by the most conservative forces in order to pass repressive criminal and procedural legislation. According to other authors, terrorism has also "hindered, or at least served as a pretext to slow down the democratic reform of the State Security Forces and Corps" (López Garrido, 1987: 16).

<sup>75</sup> These can be consulted on its website: <http://www.mir.es/oris/infoeta/index.htm>.

<sup>76</sup> This percentage would be significantly higher if we only took into account casualties up to 1980.

<sup>77</sup> The total number of victims is 783, of which 320 are civilians and 463 are divided between the Guardia Civil (196), the National Police (141), the Armed Forces (95), the Local Police (22) and the *Ertzaintza* (9). In terms of geographical location, 532 of these deaths took place in the Basque Country, 114 in Madrid, 51 in Catalonia, 36 in Navarre and 50 in other Autonomous Communities. See also the figures in Shabad and Llera (1995: 442). Another type of comparison between the overall victims of terrorism and its civilian or military nature can be found in Agüero (1995: 243).

military courts before the (civilian) Supreme Court", thanks to which "strong sentences" could be handed down against the 23-F coup plotters<sup>78</sup>. 1978 also saw the "demilitarisation of the armed police", disassociating the army from the police tasks it had held until then (Torre, 1996: 294-5). The reforms carried out during the socialist period can be grouped into four categories: "symbolic transformations", "of morale and military justice", "in personnel policy" and others that were more "structural" (Torre, 1996: 297-9).

It was only when democracy was already consolidated in Spain, that is, after the failure of the 1981 coup d'état and the triumph of the PSOE in 1982, that a series of crucial measures that had been left pending from the previous period began to be approved<sup>79</sup>. The attempted coup had warned both of the imperative need to reform the army, given the anti-democratic attitude of many of its commanders, and of how dangerous such a task could be if it was not undertaken by a strong government with broad social support<sup>80</sup>. The most profound reform of the State Security Forces could not take place until a left-wing party, which for the first time since 1977 had obtained an absolute majority of votes, proposed to undertake it.<sup>81</sup>

Organic Law 1/1984, which reformed the 1980 Organic Law on National Defence,

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<sup>78</sup> Other authors have, however, underlined the government's weakness in the face of the coup plotters (Rodríguez, 1997: 487).

<sup>79</sup> In reality, in the immediate aftermath of the coup attempt and the trials of those principally involved, "only a very limited purge took place" (Buck, 1998: 1619).

<sup>80</sup> All parliamentary parties, with the exception of the Basque Nationalist Party and Herri Batasuna, joined the mass demonstration in repudiation of the coup d'état. The demonstration was called under the slogan "for freedom, democracy and the Constitution" and took place all over Spain (with much less echo in the Basque Country) six days after the attempted coup d'état. Some incidents occurred during the course of the event, such as the one in Madrid involving various formations of the extra-parliamentary left (Revolutionary Communist League, Communist Movement and the anarchist trade union CNT), who refused to subscribe to the aforementioned slogan and demonstrated precisely in favour of "purging" to combat the coup. In addition, on several occasions they chanted cries of "Murderous police". See *El País*, 27 and 28/2/1981.

<sup>81</sup> As Agüero argues: "Not much had been achieved in defence reform and modernisation when the Socialists came to power. Most of the initial efforts had been directed at taking elementary measures to 'de-franchise' the military structures and basic adaptation to the new regime. This was the character of, for example, the changes introduced in the Constitution, the new military ordinances, the legislation restricting the political participation of officers, the promotion of exclusive military employment, the establishment of Armed Forces Day and other measures implemented by Minister Gutiérrez Mellado" (Agüero, 1995: 311).



established civilian hegemony in the management of military and defence affairs, and gave a definitive boost to the modernisation of the army. It approved a series of measures aimed, firstly, at strengthening the role of the Ministry of Defence (which during these years of Socialist government was in the hands of Narcís Serra) vis-à-vis the Chiefs of Staff of the three armies. In fact, this law "empowered the minister to direct, coordinate and control the personnel policy of the armed forces and to supervise military education<sup>82</sup> , two very sensitive areas that the military chiefs considered to be of internal interest to the institution" (Agüero, 1995: 315)<sup>83</sup> .

In short, the vast majority of people linked to Franco's repressive apparatus continued to work in different state bodies. In the case of the existing police forces, although there were important organisational reforms which facilitated the elimination of some special police forces - such as the infamous Brigade of Social or Political-Social Investigation<sup>84</sup> - almost all of their members were simply transferred to other police departments and almost never expelled. However, everything possible was done to ensure that those who had stood out for their brutality in Franco's dungeons hardly had any visibility in their new destinations<sup>85</sup> and their departure was even facilitated by reducing the retirement age (Jaúregui and Menéndez,

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<sup>82</sup> The limits of reform in the field of military education are obvious. Until very recently, the manuals used in the different armies to explain the history of Spain referred to the civil war as the "War of Liberation", which is what the Francoists always called it (Historia de la Aeronáutica, 1992: 13). In other armed forces, the situation has been very similar. According to one scholar of the police apparatus: "No major changes can be seen in the democratic period in terms of the content of teaching in the Special Academy of the Civil Guard". According to the same author, "the reason for the continuity in ideological content lies, among other things, in the fact that such content is imposed not by the Ministry of the Interior but by the Directorate of Military Education of the Ministry of Defence". Thus, "there has been no revision of the texts studied at the Special Academy of the Civil Guard after the installation of a new political regime. Since legal parties continue to appear as enemies of the security forces". Moreover, in the first-year teaching texts, at least until 1979, the "National Uprising" and the "War of Liberation" were mentioned (López Garrido, 1987: 158-159; 163).

<sup>83</sup> Today, the Ministry of Defence itself describes its main evolutionary stages as follows: a) constitutive (1977-1981), in which there was a restructuring aimed at achieving two objectives: "unification of National Defence policy and modernisation of the Armed Forces"; b) of normalisation (1982-1986), "mainly characterised by the reassignment and clarification of the competencies of the Superior Organs"; c) consolidation (1987-1991), in which "the reorganisation of the Armed Forces was carried out"; and d) development (1991-1996), "in which a new organisational improvement was made, the new structure of the Armed Forces was implemented and the model of functional relations was consolidated" ([www.mde.es/mde/evolu.htm](http://www.mde.es/mde/evolu.htm)).

<sup>84</sup> It is even said that it does not even respect the already meagre rights enshrined in Franco's legislation, especially in the *Fuero de los Españoles* (Democratic Justice: 1978: 19). This legislation is to be found in the Fundamental Laws of the State (1967).

<sup>85</sup> Pons Prades entitles one of the chapters of his book "los torturadores todavía andan sueltos" (Pons Prades, 1987: 295 ff). Pons Prades recounts a letter sent to Felipe González in 1985 by a group of people tortured by the former member of the Political and Social Brigade, Jesús Martínez Torres, and in which he writes: "The torturers are still at large" (Pons Prades, 1987: 295 ff).

1995: 170)<sup>86</sup>.

One of the most famous examples of violence and torture is what came to be known as the "Ruano case". In early 1969 a young student named Enrique Ruano was arrested by the police for distributing propaganda for the clandestine union linked to the PCE, Comisiones Obreras (CCOO). Three days later, Ruano was found dead in the inner courtyard of a private house, the police version being that the same student had thrown himself out of the window in order to escape. The anomalies surrounding his arrest and subsequent death are directly related to the state of emergency decreed by Franco's regime to repress the wave of indignation that followed the discovery of the body. The death was not properly investigated and a series of documents and evidence were even manipulated in an attempt to justify Ruano's action on the grounds of his supposed psychological imbalance<sup>87</sup>. More than twenty years after such a famous event, in 1992, the three policemen involved in the case were still active in the police force and were never punished, not even for negligence in the custody of the detainee. On this date, the family decided to reopen the case and bring it to justice. However, the lawyers for the accused argued, on the one hand, that the twenty years that had passed prevented, according to the legislation in force, the prosecution of any crime and, on the other hand, that the 1977 Amnesty Law had been passed to avoid this type of trial. In the end, the courts decided that the crime was not time-barred, but that the

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At the time, the General Commissioner of Information of the Ministry of the Interior under the command of José Barrionuevo. In this letter, they complain about the disqualifications they have been subjected to by both Martínez Torres and Barrionuevo, who refuse to acknowledge the acts of torture they allege. They state that "we were arrested by the Brigada Político Social and tortured between 1971 and 1975" and also that "the Commissioner-General of Information was stationed there and took part in the interrogations, and Mr Barrionuevo's argument that this is not recorded in the police records is outrageous; for the information of your Minister, Mr President, the whole Brigade took part in the interrogations and beatings: sometimes some, sometimes others, often almost all of them. It is, in any case, unacceptable that a democratic minister should use data from the political police of Franco's regime for his arguments (...). To conclude, Mr. President, the fact that civil servants such as Mr. Martínez Torres, former members of the Political and Social Brigade, occupy high positions in the Ministry of the Interior is not exactly the best guarantee that such execrable practices, such as those we denounce, will not continue to take place' (quoted by Pons Prades, 1987: 296-7). According to the sources consulted, the only book on the Political-Social Brigade is that of Batista (1995).

<sup>86</sup> The question of police files would require a separate investigation, but it is known that "one hundred thousand Francoist political files" (Jaúregui and Menéndez, 1995: 183-4) are kept in the Ministry of the Interior. Other files, in which the police officer in charge of monitoring and surveillance of the opposition could be identified, have been destroyed.

<sup>87</sup> In 1994, Gregorio Peces-Barba, the lawyer who denounced Ruano's death at the time, made a statement in which he highlighted the "lamentable actions of those judges of Franco's regime, who have continued to be judges afterwards (...)" (*El País*, 21/1/1994: 20).

The absence of decisive evidence (given that the evidence had been made to disappear beforehand) led to the acquittal of the three policemen involved<sup>88</sup>.

With regard to public order, it should be remembered that, in the last decades of Franco's regime, with the founding of ETA and the emergence of workers' and students' conflicts, repressive legislation was passed which represented a certain step backwards with respect to other measures which had led to a certain political liberalisation<sup>89</sup>. The most important of these were the Public Order Law of 1959 (partially repealed in July 1971 and completely repealed in February 1992) and the Decree-Law on Banditry and Terrorism of 1968 (which would not be repealed until November 1971). The existing Penal Code and Code of Military Justice were also particularly harsh. The existing legislation allowed, even in January 1977, for a further one-month suspension of certain civil rights for persons suspected of involvement in terrorist attacks<sup>90</sup>.

Another of the main repressive institutions of this period was the Tribunal and Courts of Public Order, created in 1963 and not eliminated until early 1977<sup>91</sup>. Many members of the democratic opposition came to pass through what became commonly known as the *TOP* (Tribunal de Orden Público) (see Sartorius and Alfaya, 1999). The two new Courts of Instruction set up in Madrid to replace this tribunal in 1977 had, however, the task of continuing with "the pending cases" in accordance with "the prosecution rules in force at the time of their initiation", i.e. with the repressive legislation of the previous regime. On the other hand, persons professionally linked to the TOP were temporarily seconded to other judicial bodies and then obliged to compete, with preference over other candidates, in order to obtain a permanent position. Finally, the prison regulations will also be modified in 1977 in order to "adapt" them to "a different social reality". The aim is to "respect (...) as much as possible the human personality of the prisoners and the rights and legal interests".

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<sup>88</sup> The fragment of the clavicle bone where, according to an autopsy carried out at the time, a bullet could have been lodged, had been sawed out of the body and made to disappear (*El País*, 25/7/1996: 20).

<sup>89</sup> For a study of Franco's judicial policy see Bastida (1986) and Lanero (1996). And for the workers' and students' revolts see Maravall (1978).

<sup>90</sup> Royal Decree-Law 4/1977. Boletín Oficial del Estado nº 25/1977.

<sup>91</sup> Royal Decree-Law 2/1977. Boletín Oficial del Estado nº 4/1977.

of the same"<sup>92</sup> . There will also be partial repeals of certain articles of both the Criminal Code and the Criminal Procedure Act<sup>93</sup> .

In general terms, as Guarnieri and Magalhaes (2000) point out, there was no need to purge the judicial system of people linked to the Franco regime<sup>94</sup> . In the Spanish case, and others in Southern Europe, the prevalence of a judicial culture linked to civil law (more bureaucratic, hierarchical and aseptic than that existing under *common law* judicial systems), together with the fact that the dictatorship spared ordinary judges the arduous task of applying the most repressive and ideological legislation (special jurisdictions existed for that purpose), help to explain this. The creation of a fundamental institutional mechanism allowed democracy to coexist with these judges who came from the dictatorship and were not at all inclined to apply the new legislation. The Constitutional Court has, among others, the capacity to review ordinary judicial decisions and even to annul them if it considers that they violate basic constitutional principles. On the other hand, the expansion and unification of the civil jurisdiction contributed to a fairer and less biased application of the law. Finally, when the PSOE came to power, a series of crucial reforms were initiated, such as the modification of the retirement age for judges (this would also be done with the military), with the aim of removing the people most recalcitrantly linked to the dictatorship from the exercise of justice.

The civil administration that existed after Franco's death was the one that had begun to take shape after the administrative reforms of the previous two decades. This bureaucratic network is the one that will receive democracy, which will leave it almost intact as it is considered a legitimate form of organisation of power, since it is believed - in contrast to the bureaucracies of the ex-communist regimes - that its form of recruitment is sufficiently meritocratic and that, consequently, it will be capable of managing the new regime's policies. Even surveys show that a large part of the civil service is openly in favour of the

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<sup>92</sup> Royal Decree 2273/1977. Boletín Oficial del Estado nº 210/1977.

<sup>93</sup> Law 20/1978. Boletín Oficial del Estado nº 20/1978.

<sup>94</sup> According to the authors cited, there were no "drastic appeals for the prosecution and purge of judges who had served under the authoritarian regime". Especially in Spain, "where guarantees to groups integrated into the state fabric of the authoritarian regime were conveniently negotiated and assured" (Guarnieri and Magalhaes, 200: 12).

democracy<sup>95</sup> .

The Provincial Headquarters of the National Movement, to which the civil governors were attached, were eliminated. These were fundamental administrative posts for the ideological control and repression of the Francoist State at the provincial and, above all, local level. The civil governors continued to form part of the democratic state as such, despite the negative connotations of their name, as they had always been in charge of tasks related to public order. Their statutes would not be revised until the end of 1980 and they would continue to be attributed powers in matters of public order, in addition to the provincial level command of the State Security Forces and Corps, but now they would also be responsible for "ensuring the exercise of the rights and freedoms recognised and protected by the Constitution". It was not until many years later that the figure of civil governor was abolished in the peripheral organisation of the State<sup>96</sup> .

As has already been mentioned, the Royal Decree-Law of 1 April 1977 extinguished the so-called National Movement and the institutions of a political nature that depended on it. Many of its bodies, linked to the world of communication, education, culture and sport, would remain in force for some time to come<sup>97</sup> . It was the only legal party

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<sup>95</sup> In 1983 the Centro de Investigaciones Sociológicas conducted a survey among civil servants, asking them, among other questions, about the legitimacy of democracy. The majority of those interviewed had been employed during Franco's regime, yet 89% considered democracy to be preferable to any other form of government. This percentage decreased with age (only 80% of those over 60), the lower the level of education and among practising Catholics. When asked whether they agreed that "parties only serve to divide people", a question that also evoked the memory of the Civil War, 70% disagreed, a figure that also changes with age (35% of those over 60 agreed with this statement). A more consensual issue is that of the moderate and responsible attitude of the parties in Spanish democracy. Seventy-one per cent of those interviewed agree with this behaviour, and the same percentage is registered among the over-60s. A partial exploitation of this survey appears in nº 23 of the *Revista Española de Investigaciones Sociológicas* and a more detailed study of the subject can be found in the works of Beltrán (1985 and 1994). On the continuity of administrative elites, see Baena (1999).

<sup>96</sup> Although the government of Adolfo Suárez replaced several of Franco's civil governors, the fact is that many of them continued in their posts. On the other hand, the figure of civil governor has existed in Spain, albeit under a different name, since the 19th century and has always had public order powers. Its European equivalents would be the French or Italian prefects (I owe this information to Juan José Linz).

<sup>97</sup> According to the text of the Law: "The political process opened up in our country following the approval of the Law for Political Reform, which was endorsed by a majority of the Spanish people, has a fundamental impact on the aims and structures of the National Movement (...). The guiding principles of the rules contained in this Royal Decree-Law are based, in short, on the easily perceptible distinction between the

which has been in existence since the end of the civil war, its task having been to provide service and support to the regime. The single party, which came from the merger between the Falange and Carlism, was eventually converted into a 'Movement' by the Organic Law of 1966, according to which this institution embodied 'the communion of Spaniards in the ideals that gave life to the Crusade' (*El País*, 02/04/1977: 8).

The extinction of all the bodies dependent on the Movement was accompanied, as in other cases, by the transfer of its numerous personnel (as this body had several branches) to other official institutions with the status of civil servants. Many of the women linked to the Women's Section of the Falange (some 24,000) would go on to work, without any retraining, in the State's public libraries. Other people linked to organisations such as the Movement's Press would have a similar fate. All of this would lead to protests from some of the members of the librarian corps who had obtained their jobs by competitive examination and who complained about the subsequent discrimination and the lack of professional qualifications of the new arrivals. Reintegration into the labour market was not, in this case, as silent as in the other cases, because here there was not the professional complicity that existed in the police forces<sup>98</sup>.

Finally, some authors consider the current monarchy, embodied by King Juan Carlos I, to be an institutional and personal legacy of the dictatorship, given that he was appointed by Franco as his political heir and even the succession mechanism envisaged by the dictator was scrupulously respected. However, what Franco did not count on was neither the monarch's obsession with integration (determined from his first speech to be the "King of all Spaniards", thereby aspiring to overcome the exclusions of yesteryear), nor his openness to dialogue. It is possible that the importance of the Crown in the transition has often been magnified. However, it is difficult to understand the evolution of democracy without recognising the importance of the Crown in the transition.

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functions of a purely political nature, carried out until now by certain organs of the Movement, and those others that transcend interests of a general nature". A few paragraphs later, the legislators recall that in accordance with the Statute of the General Secretariat of the Movement, its personnel had been placed on an equal footing "with those who provide their services in the State administration", which "facilitates at the present time the integration of said personnel into the regime of the public administration, while at the same time fulfilling a requirement of justice".

<sup>98</sup> See "La antigua Sección Femenina controlará la Biblioteca Pública de Valencia" (*El País*, 24/2/1978) and "Paro casi total en las bibliotecas de Barcelona" (*El País*, 1/6/1978).

certain symbolic gestures by the King that, in those first months after Franco's death, proved crucial to the success of the process. Years later, Juan Carlos I would play a key role in dismantling the attempted coup of 23 February 1981<sup>99</sup>.

To conclude this section, I will refer briefly to some symbolic legacies as well as to what Pierre Nora calls "places of memory" (Nora, 1992). Francoism, fearful of possible reprisals from the Allies, had considerably attenuated the use of fascist symbolism since the end of the Second World War. This helps to explain, according to some authors, the different attitude of the Portuguese and Spanish democratic opposition in the transition: 'the Portuguese regime was seen by the opposition as fascist to a much greater extent. Therefore, the purges in Portugal were much more a 'cleansing' of fascism, of fascist institutions and individuals, than in Spain" (Larsen, 1998: 1575). Here, however, an important part of the symbolism, if not fascist then Francoist, still remains in many towns and villages. Street names have hardly been replaced in certain provinces, the vast majority of monuments dedicated to Franco's war victims remain intact, and it is even striking that the coins bearing Franco's effigy were not removed until 1995.

One of the most visited Spanish monuments in Spain was, at least until the mid-1990s, the Valley of the Fallen, a mausoleum dedicated to the war dead, especially those of the victorious side. The remains of Franco and José Antonio Primo de Rivera reside there. Madrid's Arc de Triomphe and countless monuments from the 1930s and 1940s that perpetuate the discrimination between the victors and the vanquished also remain unchanged. Only ten years after Franco's death, in 1985, a monument dedicated to "all" the Spanish war dead was unobtrusively unveiled to include, without naming them, the victims of the losing side in the war<sup>100</sup>. Individual initiatives in this respect have

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<sup>99</sup> For a recent highly critical view of the Spanish monarchy, see Navarro (2000). However, based on the protection enjoyed by this institution in the media, he draws somewhat exaggerated conclusions about the shortcomings of Spanish democracy.

<sup>100</sup> On 22 November 1985, on the occasion of the tenth anniversary of the King's coronation, a monument to all the Spanish fallen was unveiled in Madrid, a clear attempt to continue linking the Monarchy with reconciliation and the rehabilitation of the memory of the defeated. It is located

were rather scarce and almost never received public support for their funding<sup>101</sup>. Finally, the request for the return of Picasso's painting *Guernica* to the US administration became a tribute to all the victims of the war, but especially to the Republicans.

### **What to do with the victims of repression?**

The victims of the 1940s were, frankly, difficult to "compensate" for the suffering endured over so many years. Many had died and others were still in exile. However, important reparations could still be made, both symbolically (moral rehabilitation, public recognition) and materially (pensions to survivors of repression or, where appropriate, to their families; financial compensation for years spent in Francoist prisons<sup>102</sup>). This is the aspect of retroactive justice that was most carefully considered, although in many cases this was done late and insufficiently<sup>103</sup>. The need to document events which took place a long time ago

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in front of the monolith that already existed in the Plaza de la Lealtad, dating from 1840, in memory of the heroes of 2 May, an emblematic date for Spanish nationalism. The King lit a votive flame that must burn permanently in front of the inscription *Honour to all those who gave their lives for Spain*, after which he addressed "a group of elderly ex-combatants from the two armies that fought in the civil war, who endured, visibly moved (...), the half-hour long ceremony (...). Members of both sides yesterday expressed their satisfaction at the act of 'definitive reconciliation' that the monument to the fallen symbolised for them" (*El País*, 12/11/1985: 1 and 13).

<sup>101</sup> Although fragmented and of little public resonance, there were several private initiatives in this regard. For example, in January 1978, a series of pantheons were built in Aranjuez for some two hundred dead from the Republican side who had remained in mass graves since 1939. The pantheons were financed by private subscription (*El País*, 07/01/1978: 12). Around this time, the first legal associations of Republican ex-combatants also began to form. One of the most interesting was the Unión de Ex- Combatientes de la Guerra de España, which, in accordance with the conciliatory maxim of the time, brought together veterans from both sides. Its aims included "overcoming confrontation, eradicating violence and promoting coexistence and peace, as well as fighting for equal rights for ex-combatants from both sides" (*El País*, 06/12/1978: 16).

<sup>102</sup> These compensations have been late, scarce and incomplete. Proof of this is that, very recently, some Autonomous Communities have decided to compensate on their own account former prisoners of the dictatorship who had not been able to access state aid (*El País*, 19/11/2000: 32). According to this article, some 57,000 people were able to access the aid budgeted for in the 1990 and 1992 State Budget Laws, with 45,000 cases being rejected.

<sup>103</sup> Given the difficulty of accurately identifying both the victims and those responsible for the repression, Elster is in favour of not pursuing any policy of compensation or punishment after the change of regime. If justice is only pursued "as far as possible", it would be a serious attempt, he says, to "do the most harm possible".



forty years slowed down this policy of moral reparation considerably. Moreover, the budgetary constraints of the early years of the transition meant that the implementation of certain measures, which were nevertheless considered fair and necessary by all, was unfortunately delayed. In any case, this type of legislation is extremely difficult to draft, as the casuistry is often very diverse and this means that it is necessary to draft lengthy texts that are difficult to apply.

Neither with the successive laws and decrees of partial pardons nor with the total amnesty of 1977 were all the issues related to the rehabilitation of the reprisals exhausted<sup>104</sup>. In fact, on 23 December 1977 the Communist Group submitted an interpellation in Congress defending the "labour amnesty"<sup>105</sup>; on 19 April 1978 María Izquierdo Rojo, of the Socialist Group, questioned the Government about certain teachers from the period of the Republic who had been purged (those from the professional plan of '31 and the trainees of '36) and who had not seen their rights recognised in the amnesty law<sup>106</sup>. On 30 November 1978, the Socialist Group of Catalonia presented a non-legislative proposal to speed up the processing of the amnesty for participants in the Civil War<sup>107</sup>. These initiatives are just a sample of the many which, inspired by the same reconciliatory aim, were carried out with the aim of extending the coverage and effectiveness of the amnesty approved in October 1977.

A very different, but directly related, issue is that concerning

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The "victims" of authoritarian and totalitarian regimes, according to Elster, are not only those who have suffered ill-treatment or whose property has been confiscated, but also those "whose behaviour is arbitrary or tyrannical. According to Elster, the "victims" of authoritarian and totalitarian regimes are not only those who have suffered ill-treatment or whose property has been confiscated, but also those "who have been denied all kinds of opportunities by the arbitrary or tyrannical behaviour of the authorities: access to higher education, to good jobs, to travel outside the country, or to other instruments of self-realisation" (Elster, 1995: 565-7).

<sup>104</sup> The scope of the post-war purges has recently been summarised by Tusell (2000) in a press article. According to this historian, who relies on sectoral research by several authors, Franco's purges were extremely thorough and exhaustive. The purges and sanctions reached 14% of judges, 22% of prosecutors, 26% of diplomats, 23% of university professors and 25% of teachers. The reparation of all these people was obviously impossible.

<sup>105</sup> Diario de Sesiones del Congreso nº 43; pp.1648-52; 23/12/1977.

<sup>106</sup> Diario de Sesiones del Congreso nº 46; pp.1669-79; 18/4/1978. The same deputy subsequently tabled a motion on the same subject: Diario de Sesiones del Congreso nº 63; pp.2155-7; 10/5/1978.

<sup>107</sup> Official Gazette of Congress nº 194; pp.4171-2; 30/11/1978.

pensions. The first attempts, almost always unsuccessful, to obtain this type of remuneration for the defeated came, as we saw in the previous section, during the Franco era. It was not until Franco's death that legislation to eliminate repression and provide reparation for it began to make inroads in Spain. There were several procurators, most of whom came from the family third, who tried to achieve the equal treatment of the mutilated republicans with the nationals and the readmission of purged civil servants: in short, the elimination of the discrimination that the defeated had suffered for decades. After Franco's death, there were some petitions aimed at these ends, such as that of Montserrat Tey Planas<sup>108</sup>, regarding the rights of the widows of Republican combatants, that of Eduardo Tarragona<sup>109</sup>, in the same sense as the previous one, and that of Juan Antonio Samaranch<sup>110</sup>, regarding the "application of the pardon on the occasion of the proclamation of His Majesty the King to the former civil servants of the Generalitat of Catalonia"<sup>111</sup>. Finally, with Law 37/1984 of October 1984 came the "recognition of the rights and services rendered to those who during the civil war formed part of the Armed Forces, the Public Order Forces and the Carabinieri Corps of the Republic"<sup>112</sup>.

It is clear that many issues were still outstanding. For example, while the Decree of 5 March 1976<sup>113</sup> granted pensions to mutilated Republican Army personnel, their widows were not entitled to them. The Decree was passed to provide some coverage for "war disabled who cannot join the Corps of Mutilated Knights", which calls into question the reconciliatory intention of the law which, in reality, is perpetuating the segregation between the victors and the vanquished. On 11 March, the Law on "Mutilados de Guerra por la Patria" was passed<sup>114</sup> to update certain issues relating to the Meritorious Corps of Mutilated Knights.

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<sup>108</sup> Boletín Oficial de las Cortes Españolas n° 1497; pp.36271-2; 12/4/1976.

<sup>109</sup> Boletín Oficial de las Cortes Españolas n° 1525; pp.36871-2; 12/8/1976.

<sup>110</sup> Boletín Oficial de las Cortes Españolas n° 1554; pp.37565-7; 8/2/1977.

<sup>111</sup> This request was granted, as shown by Amnesty Decree n° 1081/78, 2/5/1978 on "Application to civil servants of the Generalidad de Cataluña" (Boletín Oficial del Estado n° 25).

<sup>112</sup> Boletín Oficial del Estado n° 262/1984.

<sup>113</sup> Boletín Oficial del Estado n° 84, 7/4/1976. This decree was supplemented by Decree No 3025/76 (Boletín Oficial del Estado No 9, 11/1/1977).

<sup>114</sup> Law n° 5/76, 11/3/1976, (Boletín Oficial del Estado n° 63). This Law was supplemented by Decree No 712/77, 1/4/1977 (Government Gazette Nos 21 and 22/4/1977).

of War for the Fatherland. As the approval of the Constitution approached, many of the discriminations that were still pending were resolved. The Royal Decree-Law of 6 March 1978<sup>115</sup> resolved the situation of professional military personnel in the Republican Army. The Royal Decree-Law of 16 November 1978<sup>116</sup> granted pensions to "relatives of those who died as a result of the civil war". The preamble to this law was, at last, explicit about its intentions: "The need to overcome the differences that divided Spaniards during the last war, whatever the army in which they fought, has been a constant concern of the Government. Along these lines, it is necessary to establish equal treatment for the relatives of those Spaniards who, having died as a result of the 1936-1939 war, have not yet been recognised as having any right to a pension". In addition, several measures reconciliatory measures were to be approved after the Constitution, such as Royal Decree-Law no. 43/78<sup>117</sup>, which finally granted "economic benefits to those who suffered injuries and mutilations in the civil war". The problem of mutilated Republican combatants is subject to a long and convoluted legislation whose analysis would require an exclusive treatment, since, even today, it is still not fully resolved.

Finally, another measure of political justice that was absent from the democratic political process was the constitution of the equivalent of a "truth commission". In this way, only a few individuals carried out investigations and initiated legal proceedings to find out what had happened to their relatives or to denounce the abuses and torture they themselves had suffered<sup>118</sup>. No

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<sup>115</sup> Boletín Oficial del Estado nº 6/78, 7/3/1978.

<sup>116</sup> Boletín Oficial del Estado nº 276, 18/11/1978.

<sup>117</sup> Boletín Oficial del Estado nº 305, 22/12/1978. The preamble to the Decree-Law is equally significant: "The various governments of the Monarchy have made clear in numerous provisions their intention to overcome whatever differences may still separate Spaniards today as a result of the circumstances arising from the Spanish Civil War. The amnesty laws and other provisions of different rank have been contemplating and resolving the issue of civil servants, professional military personnel and soldiers' widows who until now had not received any pension whatsoever. The problems affecting those who suffered mutilation during the war were still pending, since Royal Decree 670/1976, of 5 March (...), only provided a solution to these problems, and it was therefore necessary to supplement it".

<sup>118</sup> Eduardo Pons Prades, a former Republican combatant, was one of the few people who demanded, in writing, the constitution of "four or five hundred commissions of enquiry that should be formed at county level to investigate everything that happened from 18 July 1936 to 20 November 1975". According to him, "the serious thing for our people (...) is that they cannot forget what they do not know" (Pons Prades,

However, as mentioned above, the 1977 Amnesty Law exempted those responsible for these acts from guilt, so the vast majority of the appeals filed were dismissed.

The only thing resembling a truth commission that can be found in the Spanish case is the commission of historians that was set up to investigate the political responsibilities for the bombing of Guernica. This issue, of enormous symbolic importance thanks to Pablo Picasso's world-famous painting, attracted a great deal of attention throughout the transition and was the only one on which any kind of historical investigation was attempted, although, again, the event was directly related to the civil war and not so much to the Franco regime. One of the first meetings of experts took place in Guernica in April 1977, on the occasion of the 40th anniversary of this event. At this event, the historians who attended undertook to try to clarify the ultimate responsibility for the bombing of Guernica and sent, together with the survivors of that fateful day, a communiqué to the Spanish government requesting both the rectification of Franco's version of the bombing - according to which it was the inhabitants of Guernica themselves who had set fire to the town - and the immediate opening of the war archives (*El País*, 26/04/1977). This pressure led the German government itself, "in its desire to seek a symbolic reparation", to agree to open its military archives in order to establish the truth of what happened. The German government has even shown itself willing to create a memorial in the town" (*El País*, 28/09/1977: 24). A year later, the Spanish government decided to authorise one of the members of the commission of historians to consult the relevant archives (*El País*, 10, 12/02/1977). Similar meetings have continued to be held in subsequent years, in which the desire to establish "the direct responsibilities of one or both parties to those events" has always prevailed. This, given the existing documentation, has so far been impossible to determine with total certainty (*El País*, 13,23,25 /04/1978: 22).<sup>119</sup>

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1987: 314).

<sup>119</sup> Much later, the association Victims of Terrorism of the Basque Country requested the creation of a very different Truth Commission, "in the style of the one formed in South Africa as a response to the situation of 'helplessness' in which it finds itself after the Human Rights Commission of the Basque Parliament 'denied' its existence" (*El País*, 7/3/1999: 25). Beyond these two limited initiatives, not by chance linked to the Basque Country, no relevant political force, nor any particular association, has requested the creation of a Truth Commission to trace what happened under the dictatorship.

## Conclusions

Fifteen years ago Maravall and Santamaría made the following reflection on the transition: "Whether the opposition made unnecessary concessions or showed more moderation than required is still an open question" (Maravall and Santamaría, 1985: 95). A quarter of a century after Franco's death, it still makes sense to ask this question; indeed, many of the publications that have been published on this twenty-fifth anniversary have focused on this issue.

There is no agreement among researchers when it comes to assessing the consequences of the amnesty, the policy of national reconciliation and the subsequent absence of purges, trials and truth commissions on the functioning of democracy. If it is not easy to establish causal relationships between the two phenomena, it is even less easy to conjecture what would have happened had Spain applied measures of revision of the past similar to those in other countries. Despite these difficulties, a number of authors have commented on what they consider to be the repercussions that these absences and presences have had on what they call the 'quality' of Spanish democracy.

For some, the lack of measures of political justice - which they see as the result of a series of unacceptable concessions by the opposition - has brought with it a series of negative consequences for the functioning of democracy. According to Buck (1998), the dilemmas facing a new regime after an authoritarian experience can be summarised as follows: "The fewer and more distant the crimes committed, the less risky it is to prosecute. On the other hand, in such cases it is often the case that fewer people demand the opening of such a trial. This means that the more important it is to confront the past, the more risky it is" (Buck, 1998: 1619). According to this author, whenever a transition takes place "from above", the end result is likely to be a "stable but limited" democracy, in which it will be normal to encounter "instances of

undemocratic decision-making" (Buck, 1998: 1630 ff.). In this sense, Buck criticises the lack of transparency of Spanish political parties, their tendency to continue negotiating behind closed doors and their oligarchic patterns. He also argues that there is a secretive way of doing politics and that there is hardly any public debate<sup>120</sup>. All this, he argues, would help to explain the recent corruption scandals<sup>121</sup> and state terrorism (the "GAL case")<sup>122</sup>.

The absence of purges and the slowing down of reforms in the Public Order Forces and the Armed Forces have also been linked to the GAL by other authors<sup>123</sup>. In fact, some research has demonstrated the survival in the intelligence services during the democratic period of people linked to the most hard-line sectors of Francoism who had been involved in repressing the opposition since the late 1960s (Medina, 1995; Jaúregui and Menéndez, 1995)<sup>124</sup>. However, even some of the authors most critical of these personal and institutional continuities, especially in the police, have acknowledged the impossibility of bringing to

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<sup>120</sup> For others, such as Vicenç Navarro: "One of the readings of the democratic transition in Spain that is most constantly reproduced in the country's media and political *establishment* is that the transition from dictatorship to democracy was exemplary. Without denying that many aspects of the transition were exemplary, others were less so. And in some key elements for the vitality of the democratic process, the transition was incomplete. These include the limited diversity in the mainstream media (...). The richness and diversity of options and values existing among the Spanish population does not exist in such media in Spain' (Navarro, 1999: 19).

<sup>121</sup> The right has used the corruption and GAL scandals in its recent election campaigns to stigmatise the PSOE. The socialists, in turn, have counterattacked by recalling the forgetfulness of the past or the amnesty to which they agreed in 1977 and even insinuating the relevance, given the impossibility of adopting criminal measures, of at least a group of "experts and historians investigating the period of the dictatorship up to 1976" (*El País*, 14/10/1997). They have also used the memory of Franco's regime to delegitimise the right.

<sup>122</sup> According to Buck, 'The GAL case indicates that some high-ranking forces - military and police - do not have confidence in the ability of the democratic system to deal with the problem of ETA terrorism' and he concludes by asking 'whether Spain will deal with atrocities committed under democracy as leniently as it did with its Francoist past' (Buck, 1998: 1634).

<sup>123</sup> According to Colomer, in the Spanish case there was "a broad consensus among citizens that avoided acts of revenge, violent confrontation and civil war" (Colomer, 1998: 9). However, he also states that "the path of change left its mark on the outcome. Significant elements of continuity with the old regime survived for many years (...). The former authoritarians did not suffer reprisals (...). Nor was there any rupture in the armed forces, the police, the judiciary and the civilian administration of the state' (Colomer, 1998: 16-7).

<sup>124</sup> They refer to the Central Documentation Service of the Presidency of the Government created by Carrero Blanco and directed by José Ignacio San Martín. According to some authors, "the people most closely linked to the information services of the previous regime have been and are (...) the most favoured in terms of promotions and impunity during the socialist period" (Jaúregui and Menéndez, 1995: 153). It was not until 1994 that the new socialist Minister of Justice and the Interior, Juan Alberto Belloc, proposed to "put an end to the so-called 'police bunker', the remnants of Francoism still in existence" (Jaúregui and Menéndez, 1995: 165).

purges in the absence of alternative candidates trained in counter-terrorism. The fact that terrorist attacks of various kinds, but especially by ETA, increased exponentially after Franco's death, and the tension that this caused in the army and the police, also helps to explain the absence of measures in this regard.

For Ballbé, the militarisation of public order has been a constant feature of Spanish life from the beginning of the last century until the Franco era. For this reason, one of the main objectives of politicians when drafting the 1978 Constitution was precisely to "demilitarise and disassociate the police apparatus from the Armed Forces" (Ballbé, 1983: 460). The fact that the Public Order Forces were renamed the State Security Forces and Corps also had practical implications, as the martial connotations of the concept of "public order" were evident (Ballbé, 1983: 462). However, the limits of these reforms and the persistence of certain authoritarian inertias are highlighted by the same author, who points out that the Forces of Public Order caused, in breaking up demonstrations between 1975 and 1978, "the death of 27 individuals" (Ballbé, 1983: 470). Another open question in the first years after Franco's death was the frequent conflicts of competence between military and civilian jurisdiction. It was only with the reform of the Code of Military Justice at the end of 1980 that these areas of competence began to be clearly delimited<sup>125</sup>. In any case, despite the reforms that have taken place, and regardless of the wishes of the drafters of the Constitution, this author affirms that not only the Civil Guard, but also the Police continue to "maintain the militarised model. This situation of the National Police in the Spanish Administration is not comparable at present to that of any democratic constitutional regime" (Ballbé, 1983: 476)<sup>126</sup>.

With regard to the behaviour of law enforcement officials, it is alarming that Amnesty International reports continued, at least until the early 1980s, to include several complaints against the Spanish police for various cases of torture,

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<sup>125</sup> Even so, the Constitutional Court had to give a ruling at a later date as disputes continued to arise in this respect (Judgment No 113/1995; Boletín Oficial del Estado No 184/1995).

<sup>126</sup> In short, several years after Franco's death, there was still "strong resistance to the implementation of a democratic policy of public order" and there were still serious "difficulties to any organic transformation of this sector of the civil administration" (Ballbé, 1983: 483).

complaints that exceeded those that, unfortunately, still exist in many of the old democracies. Despite the fact that the Spanish government has, since Franco's death, adhered to all relevant international conventions against torture and has passed its own legislation<sup>127</sup>, torture has continued to be practised on some detainees<sup>128</sup>. According to Amnesty International (1984: 185-6), "during the period under study [up to 1984] torture and ill-treatment of detainees in Spain was continuous (...). In February 1981 a detainee died in Madrid with clear signs of having been tortured (...), and in March 1984 two policemen were found guilty of having tortured a detainee in Bilbao (...). The use of torture is not common in prisons, unlike in police stations or Guardia Civil posts (...). The most frequently mentioned units are the Guardia Civil and the Cuerpo Superior de policía".

However, a considerable number of scholars tend to insist that the transition was done as well as circumstances allowed and that the non-revision of the past was a very wise decision and symptomatic of the political maturity of the Spanish people. According to Morlino and Mattei (1998), it cannot even be said that an authoritarian political culture has survived in Spain. For

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<sup>127</sup> In April 1977 Spain ratified the International Covenant on Civil and Political Rights adopted in New York in December 1966. Two years later, it also ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome in November 1950. At the end of 1987, the New York Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified. In April 1989, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987 was ratified. For its part, in December 1978, the Spanish government approved a law on "jurisdictional protection of the fundamental rights of the individual" (Law 62/1978; Official State Gazette n° 62/1978). Also in that year, the "modification of the Penal Code to typify the crime of torture" was approved (Law 31/1978. Official State Gazette n° 172/1978). In Royal Decree 1201/1981, Article 5.1 of the Penitentiary Regulations states: "no inmate shall be subjected to torture, ill-treatment by word or deed, or be subjected to unnecessary rigour in the application of the rules" (Boletín Oficial del Estado n° 149/1981). Furthermore, Article 15 of the Spanish Constitution states that "everyone has the right to life and to physical and moral integrity, without, in any case, being subjected to torture or to inhuman or degrading punishment or treatment". The same article also abolishes the death penalty, "except as may be provided for in military criminal laws for times of war". It was not until December 1985 that the following text was incorporated into the Military Criminal Code: "any soldier who intentionally causes death or serious injury, torture, rape or inhuman treatment to a wounded, sick, shipwrecked, prisoner of war or civilian population (...), or intentionally causes them great suffering, shall be punished with ten to twenty-five years' imprisonment, and may be sentenced to death" (Organic Law 13/1985. Official State Gazette No. 13/1985). No death penalty has been carried out in Spain since Franco's death. However, only two months before the dictator's death five people were executed. On these issues, see *Amnesty International's Report* entitled *Death Penalty* (1979).

<sup>128</sup> See the Amnesty International Reports for 1975, 1977 and 1978. Also by Amnesty International, but specifically on torture, see the publications *Tortura* (1984) and *España. La cuestión de la tortura* (1985).



In fact, in the countries of southern Europe (Italy, Greece, Portugal and Spain), "the past is definitely behind us. The old Francoists are a very small group. Moreover, with such high percentages of democrats and neo-democrats there are no possible alternatives to the present democratic arrangements. The authoritarians do not seem to constitute a threat in any sense' (Morlino and Mattei, 1998: 1172). This is also what Joaquín Arango, director during the socialist period of the Centro de Investigaciones Sociológicas, subscribes, for whom "the restoration of democracy in Spain was almost immediate and penetrated society completely" (quoted by Buck, 1998: 1630). The author of this paper, while agreeing with the above statements on the non-existence of a plausible political alternative from the very minority sectors of the extreme right (especially in Spain, where no political formation of this type has yet managed to take root<sup>129</sup>), also believes that there are some significant, though increasingly residual, legacies of authoritarian political culture that can be measured in many different ways (Rodríguez Ibáñez, 1987; Torcal, 1995). In fact, it does not seem at all irrelevant that in Spain, at least until 1987, 15% of the population had a positive evaluation of the Franco regime. Other anomalous features of Spanish political culture, such as widespread political disaffection and apathy, have been extensively researched, although it is true that they are not usually accompanied by a questioning of the legitimacy of the system (Montero, Gunther and Torcal, 1998)<sup>130</sup>.

The post-war repression, which was the most brutal, was not even explicitly mentioned during the transition, nor was it once democracy was consolidated. However, almost everyone was aware of the urgent need to make reparations to those who suffered repression during the early years of Franco's regime. All of this allowed other later repressive episodes which, compared to that one, were of much lesser importance, to be overlooked. The peculiar case, once again, is the Basque Country, where repression increased after the founding of ETA and the first terrorist attacks at the end of the 1960s, which explains why the absence of political justice measures was more keenly felt in the Basque Country and why it also had more serious repercussions on the behaviour of certain actors, especially the police. As a consequence of this

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<sup>129</sup> On the reasons for this absence, see Casals (1999).

<sup>130</sup> As Rohrschneider (1999) has recently shown for the German case, a political culture that is unequivocally supportive of democracy is perfectly compatible with the existence of anti-tolerant and anti-pluralist values within it. These paradoxes should be examined more closely.

In the previous period, reservations about the way in which the transition was carried out are much greater among Basques (especially among the nationalist electorate) than among Spaniards as a whole<sup>131</sup>.

In short, some researchers have a vision of the transition as "exemplary and exemplary due to the low social cost of the path followed, but which has produced, as a paradoxical consequence of its own method of fearful negotiations, a rather mediocre and low-quality democracy" (Colomer, 1998: 10). According to the same author, "the virtues of the transition have become the vices of democracy" (Colomer, 1998: 181). The links between the type of transition (moderate and negotiated) and the solutions adopted to the legacies of repression are evident<sup>132</sup>. Ian Shapiro makes a similar argument in relation to the South African transition. For him, this case has been "identified in the Western press as a model for Africa and as a symbol of hope for democracy advocates everywhere". And all this because of the characteristics of the process of change itself: "Despite a considerable degree of violence, there was no civil war, no military coup, and the cooperation between the actors whose collaboration was necessary was impressive" (Shapiro, 1996: 175). However, despite academic enthusiasm for "negotiated transitions", Shapiro observes that "there are serious doubts about whether the constitutional rules that emerge in negotiation processes facilitate democratic politics in the medium term. In particular, South Africa's transitional constitution lacks the system of institutions of opposition that any healthy democracy requires". For this author, "the dynamics generated by negotiated transitions (...) make it virtually impossible for the main actors to converge around an agreement that includes the provision of effective opposition forces in the new democratic order". He therefore concludes "that while an interim constitution may well be the best possible tool for ending *apartheid* without civil war, such a constitution should not become permanent" (Shapiro,

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<sup>131</sup> I was able to observe these differences in the 1994 CIS study No. 2201. When respondents were asked whether they considered the transition to be a "source of pride for Spaniards", less than 50% of Basques agreed, while more than 80% of the rest of Spaniards felt this way (Aguilar, 1999: 60).

<sup>132</sup> "In Spain, the very nature of the transition prevented any prosecution of those responsible for the dictatorship, due to the pacts signed between the government of Adolfo Suárez, the opposition and the military" (Guarnieri and Magalhaes, 2000: 10).

1996: 176-7).

One of the unintended consequences of the negotiated transition in Spain could be, in addition to the limits that, according to Shapiro, institutional designs designed to stabilise periods of change tend to have, to have consolidated a way of doing politics that avoids openly discussing the most sensitive issues and those most likely to provoke deep fractures in society. Excessive risk aversion, such as existed at the time of political change, can impose serious limits on the necessary accountability<sup>133</sup>. On the other hand, the failure to carry out measures of political justice, based on the impossibility of doing so given the balance of power that existed after Franco's death<sup>134</sup>, has favoured the political elites' abusive use of the argument of "inheritance received", blaming an authoritarian past for behaviour that is inadmissible in a consolidated democracy.

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<sup>133</sup> On the problems of accountability in Spanish politics, see Maravall (1996: 33 ff.).

<sup>134</sup> In the same vein, "due to the initially dominant role of the former Francoists and the legal procedure followed during the transition, the established democratic regime maintained for many years some elements of continuity with that past (especially with regard to the civil, judicial, police and military administrations). As a consequence of the fear of instability, restrictive democratic institutions were established, which have led to a high degree of concentration of power in the leadership of the two major parties (...). The wide room for manoeuvre of the leaders, the weakness of the intermediate organisations between the state and society, and the passivity of the citizenry - inherited from the transition - make for a low-quality democracy" (Colomer, 1998: 177).



## REFERENCES

- Adell, Ramón (1997): "Manifestations et transition démocratique en Espagne", *Les Cahiers de la Sécurité Intérieure*, nº 27, pp.203-222.
- Agüero, Felipe (1995): *Militares, civiles y democracia*, Alianza Editorial, Madrid.
- Aguilar, Paloma (1996): *Memoria y olvido de la guerra civil española*, Alianza Editorial, Madrid.
- Aguilar, Paloma (1997): "Collective Memory of the Spanish Civil War: The Case of Political Amnesty in the Spanish Transition to Democracy", *Democratization*, nº4, pp.88-109.
- Aguilar, Paloma (1998): "The Memory of the Civil War in the Transition to Democracy: The Peculiarity of the Basque Case", *West European Politics*, vol.21, nº4, pp.5-25.
- Aguilar, Paloma (1999): "La cultura política del País Vasco en el contexto español: Legados institucionales y culturales de los procesos de cambio político" (unpublished manuscript).
- Amnesty International (1975): *Amnesty International Report. Mission to Spain*, Nottingham.
- Amnesty International (1977): *Amnesty International Report*, London. Amnesty
- International (1978): *Amnesty International Report*, London.
- Amnesty International (1979): *Amnesty International Report. The death penalty*, London.
- Amnesty International (1984): *Amnesty International Report. Torture*, London.
- Amnesty International (1985): *Spain. The question of torture*, London.
- Baena del Alcázar, Mariano and José M<sup>o</sup> García Madaria (1982): *Normas políticas y administrativas de la transición. 1975-1978*, Servicio Central de Publicaciones de Presidencia del Gobierno, Madrid.
- Baena del Alcázar, Mariano (1999): *Élites y conjuntos de poder en España, 1939-1992: un estudio cuantitativo sobre parlamento, gobierno y administración y gran empresa*, Tecnos, Madrid.
- Ballbé, Manuel (1983): *Orden público y militarismo en la España constitucional (1812-1983)*, Alianza Editorial, Madrid.
- Bastida, Francisco J. (1986): *Jueces y franquismo. El pensamiento político del Tribunal Supremo en la Dictadura*, Ariel, Barcelona.
- Batista, Antoni (1995): *Brigada Social*, Empúries, Barcelona.

- Beltrán, Miguel (1985): *Los funcionarios ante la reforma de la administración*, Centro de Investigaciones Sociológicas/Siglo XXI, Madrid.
- Beltrán, Miguel (1994): "Política y administración bajo el Franquismo: la reforma administrativa y los Planes de Desarrollo", CEACS, Estudio/Working Paper n° 53, *Instituto Juan March de Estudios e Investigaciones*, Madrid.
- Benet, Juan (1976): *Qué fue la Guerra Civil*, La Gaya Ciencia, Barcelona.
- Bermeo, Nancy (1992): "Democracy and the Lessons of Dictatorship", *Comparative Politics*, 19 (2), pp.213-231.
- Bermeo, Nancy (1997): "Myths of Moderation: Confrontation and Conflict during Democratic Transitions", *Comparative Politics*, vol.29, n°3, pp.305-322.
- Buck, Marcus (1998): "The exemplary transition from authoritarianism: Some notes on the legacy of undemocratic decision-making in Spain", in Stein Ugelvik Larsen (ed.), *Modern Europe After Fascism. 1943-1980s*, Social Science, East European Monographs, Boulder.
- Carrillo, Santiago and Simón Sánchez-Montero (1977): *Partido Comunista de España*, Albia, Bilbao.
- Casals, Xavier (1998): *La tentación neofascista en España*, Plaza & Janés, Barcelona.
- Casals, Xavier (1999): "La ultraderecha española: una presencia ausente (1975-1999)", in *Historia y Política*, n°3, pp. 147-172.
- Castells, Miguel et al. (1978): *Democracia: sí, no*, Ediciones Vascas, San Sebastián.
- Cazorla, Antonio (2000): "Early Francoism, 1939-1957", in José Álvarez Junco and Adrian Shubert (eds): *Spanish History Since 1808*, Arnold, London.
- Chao, Ramón (1976): *Después de Franco, España*, Felmar, Madrid.
- Collier, Ruth B. and David Collier (1991): *Shaping the Political Arena. Critical Junctures, The Labor Movement, and Regime Dynamics in Latin America*, Princeton University Press, Princeton.
- Colomer, Josep M. (1990): *El arte de la manipulación política*, Anagrama, Barcelona.
- Colomer, Josep M. (1996): "Venganza democrática o reconciliación", *Claves*, n° 60, pp.22-30.
- Colomer, Josep M. (1998): *La transición a la democracia: el modelo español*, Anagrama, Barcelona.
- Corradi, Juan E., Patricia Weiss and Manuel A. Garretón (1992): *Fear at the Edge. State Terror*

- and Resistance in Latin America*, University of California Press, Berkeley.
- Cotarelo, Ramón (comp.) (1992): *Transición política y consolidación democrática. España (1975-1986)*, Centro de Investigaciones Sociológicas, Madrid.
- Crawford, Beverly and Arend Lijphart (1995): 'Explaining Political and Economic Change in Post- Communist Eastern Europe: Old Legacies, New Institutions, Hegemonic Norms, and Internantional Pressures', *Comparative Political Studies*, 28, 2, pp.171-200.
- Cruzado, Miguel A. (1977): *Partidos políticos y economía: 22 alternativas para el futuro*, Akal, Madrid.
- Del Águila, Rafael and Ricardo Montoro (1984): *El discurso político de la transición española*, Centro de Investigaciones Sociológicas, Madrid.
- Delgado, Julián (1996): *Prietas las filas. Recuerdos de un capitán de los grises*, Editorial Libros PM, Barcelona.
- Druckman, James N. and Arthur Lupia (2000): "Preference Formation", *Annual Review of Political Science*, 3 (1): 1-24.
- Elster, Jon (1995): "On Doing What One Can: An Argument Against Post-Communist Restitution and Retribution", in Neil J. Kritz (ed.), *Transitional Justice. How Emerging Democracies Reckon with Former Regimes*, Vol.1, United States Institute of Peace Press, Washington.
- Elster, Jon (1998): "Coming to Terms with the Past. A Framework for the Study of Justice in the Transition to Democracy", *Archives Européennes de Sociologie*, XXXIX, n?1, pp.7-48.
- Esteve, Francisco (1977): *Manual del elector*, Ediciones Mayler, Barcelona.
- Figuero, Javier et al. (1976): *Las reformas urgentes*, Taller Ediciones Josefina Betancor, Madrid.
- Forest, Eva (1978): "Nuevas formas de represión en la democracia", in Miguel de Castells et al, *Democracy. Yes/No*, Ediciones Vascas, San Sebastian.
- González, Felipe and Alfonso Guerra (1977): *Partido Socialista Obrero Español*, Albia, Bilbao.
- Guarnieri, Carlo and Pedro C. Magalhaes (2000): *Democratic Consolidation, Judicial Reform, and the Judicialization of Politics in Southern Europe* (forthcoming).
- Gunther, Richard, Giacomo Sani and Goldie Shabad (1986): *The political party system in Spain. Génesis y evolución*, Centro de Investigaciones Sociológicas, Madrid.
- Hall, Peter A. (1993): "Policy Paradigms, Social Learning and the State", *Comparative Politics*, 23, pp.279-296.
- Historia de la Aeronáutica (chronological summary)*, Grupo de Enseñanza S.F.C.M., Ala n? 78, Armilla, November 1992.

- Holmes, Stephen ([1988] 1993): "Gag Rules and the Politics of Omission", in Jon Elster and Rune Slagstad: *Constitutionalism and Democracy*, Cambridge University Press, Cambridge.
- Huntington, Samuel P. (1991): *The Third Wave. Democratization in the Late Twentieth Century*, University of Oklahoma Press, London.
- Ibáñez, Perfecto Andrés and Ventura Pérez Mariño (1991): "La justicia: entre la Constitución y la crisis", in José Vidal-Beneyto (ed.): *España a debate. La política*, Tecnos, Madrid.
- Ibarzábal, Eugenio (1977): *Euskadi. Diálogos en torno a las elecciones*, Erein, Zarauz.
- Report of the National Commission on the Disappearance of Persons (1997 [1984]): *Nunca Más*, Editorial Universitaria de Buenos Aires.
- Jaime-Jiménez, Óscar and Fernando Reinares (1998): "The policing of mass demonstrations in Spain: From dictatorship to democracy", in Donatella della Porta and Herbert Reiter (eds), *Policing protest. The control of mass demonstrations in Western democracies*, University of Minnesota Press, Minneapolis.
- Jaúregui, Fernando and Manuel Ángel Menéndez (1995): *Lo que nos queda de Franco. Símbolos, personajes, leyes y costumbres veinte años después*, Temas de Hoy, Madrid.
- Jervis, Robert (1976): *Perception and Misperception in International Politics*, Princeton University Press, Princeton.
- Juliá, Santos (coord.) (1999): *Víctimas de la guerra civil*, Temas de Hoy, Madrid.
- Juliá, Santos (ed.) (2000): *Violencia política en la España del siglo XX*, Taurus, Madrid.
- Justicia Democrática (1978): *Los jueces contra la dictadura (justicia y política en el franquismo)*, Túcar Ediciones, Madrid.
- Kritz, Neil J. (ed.) (1995): *Transitional Justice. How Emerging Democracies Reckon with Former Regimes*, III Vols, United States Institute of Peace Press, Washington.
- Laitin, David (1995): "Transitions to Democracy and Territorial Integrity," in Adam Przeworski, ed, *Sustainable Democracy*, Cambridge University Press, Cambridge.
- Laiz, Consuelo (1995): *La lucha final. Los partidos de la izquierda radical durante la transición española*, Libros de La Catarata, Madrid.
- Lanero, Mónica (1996): *Una milicia de la justicia. La política judicial del franquismo (1936-1945)*, Centro de Estudios Constitucionales, Madrid.
- Larsen, Stein Ugelvik (1998): "The Democratic Latecomers. Transition to Democracy in Portugal, Spain and Greece", in Stein Ugelvik Larsen (ed.), *Modern Europe After Fascism. 1943- 1980s*, Social Science, East European Monographs, Boulder.



- Levy, Jack S. (1992): "An Introduction to Prospect Theory", *Political Psychology*, 13, 2, pp.171- 186.
- Leyes Fundamentales del Estado (1967): *La Constitución Española*, Servicio Informativo Español, Madrid.
- Linz, Juan J. (1986): *Conflicto en Euskadi*, Espasa-Calpe, Madrid.
- Linz, Juan J. (1992): "Types of Political Regimes and Respect for Human Rights: Historical and Cross-national Perspectives", in Asbjorn Eide and Bernt Hagtvet (eds): *Human Rights in Perspective. A Global Assessment*, Basil Blackwell, Oxford.
- Linz, Juan J. (1995): "Represión y oposición al régimen", in José Andrés Gallego, Juan Velarde, Juan J. Linz, Nazario González and Antonio Marquina: *España actual. España y el mundo (1939-1975)*, Gredos, Madrid.
- Linz, Juan J., Alfred Stepan and Richard Gunther (1995): "Democratic Transition and Consolidation in Southern Europe, with Reflections on Latin America and Eastern Europe", in Richard Gunther, P. Nikiforos Diamandouros and Hans-Jürgen Puhle (eds): *The Politics of Democratic Consolidation*, The Johns Hopkins University Press, Baltimore.
- Linz, Juan J. and Alfred Stepan (1996): *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Johns Hopkins University Press, Baltimore.
- López Garrido, Diego (1987): *El aparato policial en España. Historia, sociología e ideología*, Ariel, Barcelona.
- Malefakis, Edward (1982): 'Spain and Its Francoist Heritage', in John H. Herz, *From Dictatorship to Democracy. Coping with the Legacies of Authoritarianism and Totalitarianism*, Greenwood Press, Westport.
- Malefakis, Edward (dir.) ([1986] 1996): *La Guerra de España (1936-1939)*, Taurus, Madrid.
- Maravall, José M? (1978): *Dictadura y disenso político*, Alfaguara, Madrid.
- Maravall, José M? and Julián Santamaría (1985): "Crisis of Francoism, political transition and consolidation of democracy in Spain", *Sistema*, 68-69, pp.79-129.
- Maravall, José M? (1996): "Accountability and Manipulation", *Study/Working Paper n? 62*, CEACS, Instituto Juan March, Madrid.
- March, James and Johan P. Olsen (1989): *Rediscovering Institutions*, Free Press, New York.
- Martínez Inglés, Amadeo (1994): *La transición vigilada. Del sábado santo rojo al 23-F*,

Temas de Hoy, Madrid.

Mata López, José Manuel (1993): *El nacionalismo vasco radical. Discurso, organización y expresiones*, Universidad del País Vasco, Bilbao.

McAdams, A. James (ed.) (1997): *Transitional Justice and the Rule of Law in New Democracies*, University of Notre Dame Press, Notre Dame.

Medina, Francisco (1995): *Las sombras del poder. Los servicios secretos de Carrero a Roldán*, Espasa-Calpe, Madrid.

Montero, José Ramón, Richard Gunther and Mariano Torcal (1998): "Actitudes hacia la democracia en España: legitimidad, descontento y desafección", *Revista Española de Investigaciones Sociológicas*, nº83, pp.9-49.

Morales, José Luis and Juan Celada (1981): *La alternativa militar. El golpismo después de Franco*, Editorial Revolución, Madrid.

Morán, Gregorio (1991): *El precio de la transición*, Planeta, Barcelona.

Morlino, Leonardo and Fanco Mattei (1998): "Old and New Authoritarianism in Southern Europe", in Larsen, Stein Ugelvik (ed.), *Modern Europe After Fascism. 1943-1980s*, Social Science, East European Monographs, Boulder.

Morrow, James D. (1994): *Game Theory for Political Scientists*, Princeton University Press, Princeton.

Muñoz Alonso, Alejandro (1982): *El terrorismo en España*, Círculo de Lectores, Barcelona.

Navarro, Vicenç (1999): "Una victoria del neoliberalismo", *El País*, 26/5/1999: 19-20.

Navarro, Vicenç (2000): "La democracia incompleta", *El País*, 19/12/2000: 15-16.

Nino, Carlos S. (1997): *Juicio al mal absoluto*, Emecé, Buenos Aires.

Nora, Pierre (1992): *Lieux de mémoire*, 3 vols, Gallimard, Paris.

North, Douglass C. (1990): *Institutions, Institutional Change and Economic Performance*, Cambridge University Press, Cambridge.

North, Douglass C. (1998): "Five Propositions about Institutional Change", in Jack Knight and Itai Sened (eds): *Explaining Social Institutions*, The University of Michigan Press, Ann Arbor.

Ortzi (pseudonym of Francisco Letamendía) (1979): *El no vasco a la reforma*, 2 vols, Txertoa, San Sebastián.

*Pactos de la Moncloa. Texto completo del acuerdo económico y del acuerdo político*, Madrid, 8-27 October 1977, Servicio Central de Publicaciones de Presidencia del Gobierno, Madrid.

- Payne, Stanley (1993): *Spain's First Democracy: The Second Republic, 1931-1936*, University of Wisconsin Press, Madison.
- Pierson, Paul (2000): "Increasing Returns, Path Dependence, and the Study of Politics", *American Political Science Review*, 94 (2), pp.251-267.
- Pons Prades, Eduardo (1987): *Crónica negra de la transición española (1976-1985)*, Plaza & Janés, Barcelona.
- Putnam, Robert D. (1993): *Making Democracy Work*, Princeton University Press, Princeton.
- Pridham, Geoffrey (2000): "Confining Conditions and Breaking with the Past: Historical Legacies and Political Learning in Transitions to Democracy", *Democratisation*, 7, 2, pp.36-64.
- Przeworski, Adam ([1986]1988): "Algunos problemas en el estudio de la transición hacia la democracia", in Guillermo O'Donnell et al. (comps), *Perspectivas comparadas*, vol.3, Paidós, Buenos Aires.
- Przeworski, Adam ([1988]1993): "Democracy as a Contingent Outcome of Conflicts", in Jon Elster and Rune Slagstad: *Constitutionalism and Democracy*, Cambridge University Press, Cambridge.
- Reinares, Fernando (1990): "Sociogénesis y evolución del terrorismo en España", in Salvador Giner (dir.): *España. Sociedad y Política*, Tomo I, Espasa-Calpe, Madrid.
- Rivera, Antonio (1998): "La transición en el País Vasco: un caso particular", in Javier Ugarte (ed.), *La transición en el País Vasco y España. Historia y Memoria*, Universidad del País Vasco, Bilbao.
- Rodríguez, José Luis (1997): *La extrema derecha española en el siglo XX*, Alianza Editorial, Madrid.
- Rodríguez Ibáñez, José Enrique (1987): *Después de una dictadura: cultura autoritaria y transición política en España*, Centro de Estudios Constitucionales, Madrid.
- Rohrschneider, Robert (1999): *Learning Democracy. Democratic and Economic Values in Unified Germany*, Oxford University Press, Oxford.
- Rustow, Dankwart A. (1970): "Transitions to Democracy. Toward a Dynamic Model", *Comparative Politics*, n°2, April, pp.337-363.
- Sánchez-Cuenca, Ignacio (1995): *Agricultural negotiations between the European Community and the United States in the Uruguay Round. Un análisis desde la lógica de la elección racional*, CEACS, Instituto Juan March, Madrid.
- Sánchez Navarro, Ángel J. (1998): *La transición española en sus documentos*, Centro de

Estudios Políticos y Constitucionales/Boletín Oficial del Estado, Madrid.

Sartorius, Nicolás and Javier Alfaya (1999): *La memoria insumisa. Sobre la dictadura de Franco*, Espasa, Madrid.

Shabad, Goldie and Francisco J. Llera (1995): "Political Violence in a Democratic State: Basque Terrorism in Spain", in Martha Crenshaw (ed.), *Terrorism in Context*, The Pennsylvania State University Press, Pennsylvania.

Shapiro, Ian (1996): *Democracy's Place*, Cornell University Press, Ithaca.

Sinova, Justino (ed.) (1984): *Historia de la transición. Diez años que cambiaron España (1973-1983)*, 2 vols, Grupo 16, Madrid.

Soto, Álvaro (1996): "Conflictividad social y transición sindical", in Javier Tusell and Álvaro Soto (eds), *Historia de la transición. 1975-1986*, Alianza Editorial, Madrid.

Thelen, Katheleen (1999): "Historical Institutionalism in Comparative Politics", *American Review of Political Science*, 2, pp.369-404.

Toharia, José Juan (1984): "La administración de justicia española diez años después: muchos cambios y algunas continuidades", *Anuario de Sociología y Psicología Jurídicas*, 11, pp.7-22.

Torcal, Mariano (1995): "Actitudes políticas y participación política en España. Pautas de cambio y continuidad", Doctoral Thesis, Universidad Autónoma de Madrid.

Torre, Hipólito de la (ed.) (1996): *Fuerzas Armadas y poder político en el siglo XX de Portugal y España*, UNED, Centro Regional de Extremadura, Mérida.

Tusell, Javier (2000): "La gran depuración", *El País* (Sunday Section), 1/10/2000: 8.

Vidal-Beneyto, José (1981): *Diario de una ocasión perdida*, Kairós, Barcelona.